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November 1, 1994

Mr. Vernon Williams  
Acting Secretary  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed is a Loan Agreement, Chattel Mortgage, and Security Agreement dated as of October 31, 1994, between the following parties:

Secured Party: Mark Twain Illinois Bank  
One Mark Twain Bank Plaza  
Edwardsville, IL 62025

Debtor: Southern Illinois Railcar Company  
One Mark Twain Plaza, #225  
Edwardsville, IL 62025

The equipment involved in this transaction includes covered hoppers further described on Schedule 1 A to Borrowing Schedule.

Please file this document as a primary agreement. The filing fee of \$21 is enclosed. Thank you for your assistance.

Sincerely,

*Mary Ann Oster*

Mary Ann Oster  
Research Consultant

Enclosures

*Counterparts - Mary Ann Oster*

# Interstate Commerce Commission

Washington, D.C. 20423

11/1/94

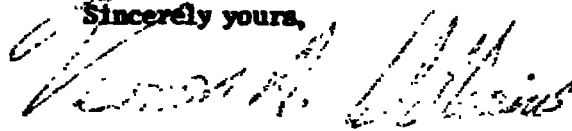
OFFICE OF THE SECRETARY

Mary Ann Oster-  
Research Consultant  
Oster Researching Services  
12897 Colonial Drive  
Mt. Airy, MD. 21771

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/1/94 at 10:15AM, and assigned recordation number(s) 19040.

Sincerely yours,



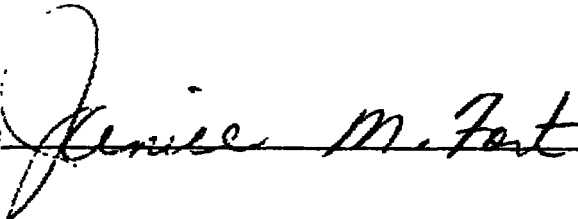
Vernon A. Williams  
Secretary

Enclosure(s)

(0100420017)

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Signature



19040

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LOAN AGREEMENT, CHATTEL MORTGAGE AND SECURITY AGREEMENT

by and between

MARK TWAIN ILLINOIS BANK

and

SOUTHERN ILLINOIS RAILCAR COMPANY

Dated as of October 31, 1994

---

Covering

Covered Hopper Railcars

---

Filed and recorded with the Interstate Commerce Commission  
pursuant to the Interstate Commerce Act, 49 U.S.C. § 11303 on  
\_\_\_\_\_, 1994, at \_\_\_\_\_.m., under Recordation No.  
\_\_\_\_\_.

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## LOAN AGREEMENT, CHATTEL MORTGAGE AND SECURITY AGREEMENT

THIS LOAN AGREEMENT, CHATTEL MORTGAGE AND SECURITY AGREEMENT (this "Loan Agreement") dated as of October 31, 1994, is made by and between MARK TWAIN ILLINOIS BANK, an Illinois banking corporation (the "Bank"), and SOUTHERN ILLINOIS RAILCAR COMPANY, an Illinois corporation (the "Borrower").

### RECITALS

WHEREAS, the Borrower has requested that the Bank consider making loans to it from time to time, the proceeds of which will be used by Borrower to finance a portion of the acquisition cost of covered hopper railcars (herein the "Railcars") as shall be identified on item 1 of the Borrowing Schedule (as that term is defined herein) ; and

WHEREAS, in order to secure the prompt payment and performance of all of its obligations to the Bank, the Borrower proposes to grant to the Bank a continuing, first priority security interest in, and chattel mortgage lien on, the Railcars, all accessions, modifications and attachments thereto and all proceeds, including rentals, insurance proceeds, casualty value payments, allowances, settlements and requisition compensation, thereof and to assign to the Bank, among other things, all of its right, title and interest (but not its obligations) in, to and under any Lease thereof, and all documents related to any of the foregoing; and

WHEREAS, the Bank may, from time to time, make such loans to the Borrower subject and pursuant to the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1

#### INTERPRETATION

Section 1.1. Definitions. For the purposes of this Loan Agreement:

"Abatement" means with respect to any Railcar, any rent abatement, if any, provided for in a Lease.

"Applicable Law" means all material applicable provisions of all (a) constitutions, statutes, rules, regulations and orders of Governmental Authorities, (b) Governmental Approvals, and (c) orders, decisions, judgments and decrees of all courts and arbitrators; except that for purposes of determining the maximum interest rate payable hereunder, Applicable Law means the laws of the State of Illinois applicable to maximum permitted rates of interest.

"Borrower" means Southern Illinois Railcar Company, an Illinois corporation.

"Borrowing Schedule" means each Borrowing Schedule from time to time delivered by Borrower to the Bank in respect of a Loan in the form of Schedule 1 attached hereto.

"Business Day" means any day other than a Saturday, Sunday or other day on which banking institutions in the State of Illinois are authorized or obligated to remain closed.

"Casualty Occurrence" shall have the meaning set forth in Section 6.2.

"Casualty Value" shall have the meaning set forth in Section 2.5(b).

"Class 1 Railroad" means a corporation that is at the time of determination a railroad operator required under the Interstate Commerce Act to submit or have submitted on its behalf an R-1 Report periodically to the ICC or considered at any time by the ICC under applicable rules and regulations to be a railroad operator that is a "Class 1 Railroad".

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" shall have the meaning set forth in Section 4.1.

"Collateral Account" shall have the meaning set forth in Section 2.8(c).

"Commitment" means the commitment of the Bank to lend to the Borrower certain sums pursuant to Section 2.1 hereof.

"Commonly Controlled Entity" shall have the meaning set forth in Section 7.14.

"Contamination" means the present past and future uncontained presence, leak, discharge, emission, release, threatened release, suspected release or abandonment of Hazardous Substances that may require remediation, removal, abatement or

cleanup under any of the Environmental Laws upon property (including, but not limited to, the improvements, facilities, soil, ground water, air or other elements on, or of, such property).

"Contract" means an indenture, agreement (other than this Loan Agreement), other contractual restriction, lease, instrument, certificate of incorporation or charter, or bylaw.

"Corporate Base Rate" means the rate of interest announced publicly by the Bank from time to time as its corporate base rate or other designation in replacement of the corporate base rate announced by the Bank. Such rate may not be the lowest rate offered by the Bank.

"Default" means any condition or event which with the giving of notice or lapse of time, or both, would, unless cured or waived, become an Event of Default.

"Default Date" shall have the meaning set forth in Section 2.7.

"Default Rate" shall have the meaning set forth in Section 2.7.

"Environmental Laws" means any and all environmental laws and regulations promulgated thereunder, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended; the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., as amended; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as amended; and any other law similar to those set forth in this definition.

"Equipment Collateral" shall have the meaning set forth in Section 4.1(b).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Event of Default" means any of the events specified in Article XI of this Loan Agreement.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States of America.

"Governmental Approval" means an authorization, consent, approval, license or exemption from, registration or filing with, or report or notice to, any Governmental Authority.

"Governmental Authority" means any international, federal, state or local regulatory, governmental or quasi-governmental entity or political subdivision thereof, including, without limitation, any department, commission, board, bureau, intermediary, agency or other governmental instrumentality.

"Guarantors" means, collectively, Fred L. Parsons and Eugenia M. Parsons, and their respective personal representatives, heirs and legatees.

"Guaranty" means the Guaranty dated as of even date herewith and executed by Fred L. Parsons and Eugenia M. Parsons in favor of the Bank, its successors and assigns, a copy of which is annexed hereto as Exhibit C.

"Hazardous Substances" means any hazardous substance as defined in CERCLA or other Applicable Laws, oil of any kind, petroleum products and their by-products, including, but not limited to, sludge or residue, asbestos containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, any and all other hazardous or toxic substances, hazardous waste as defined in RCRA and the Applicable Laws, medical waste, infectious waste, used tires, and all other pollutants, contaminants and other substances regulated or controlled by the Environmental Laws and any other substance the presence of which is prohibited by any of the Environmental Laws or that requires special handling in its collection, storage, treatment or disposal under the Environmental Laws.

"ICC" means the Interstate Commerce Commission or any successor agency thereto.

"Lease" means each lease, and all replacements thereof, between the Borrower, as lessor, and a third party, as lessee, with respect to any or all of the Railcars.

"Lien", as applied to the property or assets (or the income or profits therefrom) of any Person, means (in each case, whether the same is consensual or nonconsensual or arises by Contract, operation of law, legal process or otherwise) any mortgage, lien, pledge, attachment, levy, charge, or other security interest or encumbrance of any kind in respect of any property or assets of such Person, or upon the income or profits therefrom. For this purpose, the Borrower shall be deemed to own subject to a Lien any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement,

capitalized lease or other title retention agreement relating to such asset.

"Liquidation Costs" shall have the meaning set forth in Section 12.4.

"Loans" shall mean, all loans made to Borrower made pursuant to the terms hereof.

"Loan Agreement" means this Loan Agreement, Chattel Mortgage and Security Agreement, as amended from time to time, and after giving effect to all waivers and departures from the terms hereof that have been consented to, but only, in the case of each such amendment, waiver or consent, to the extent it complies with the provisions of Section 14.6 of this Loan Agreement.

"Loan Documents" means this Loan Agreement, all Promissory Notes, each Borrowing Schedule, the financing statements and all other instruments, documents or agreements relating to the Obligations, both now or hereafter executed and/or delivered by the Borrower to the Bank.

"Materially Adverse Effect" means (a) with respect to any Person, a materially adverse effect upon such Person's business, assets, liabilities, financial condition, results of operations or business prospects, and (b) with respect to this Loan Agreement, any Contract or any other obligation, a materially adverse effect, as to any party thereto, upon the binding nature, validity or enforceability thereof.

"Modification Termination" means a termination of a Lease as it relates to a Railcar.

"Notice" shall have the meaning set forth in Section 2.8(c).

"Obligations" of the Borrower at any time to the Bank means all of the Borrower's liabilities, obligations and indebtedness at such time to the Bank of any kind whatsoever, howsoever evidenced and whether contingent or otherwise, including, without limitation, all of the Borrower's liabilities, obligations and indebtedness to the Bank under this Loan Agreement, the Promissory Notes and the other Loan Documents.

"Payment Date" means (i) with respect to a Casualty Occurrence taking place while any Lease is in effect, the date on which the next scheduled installment payment date under the applicable Promissory Note following the happening of such event; (ii) with respect to a Casualty Occurrence taking place after any Lease has been terminated, on the next scheduled installment payment date under the applicable Promissory Note following the happening of such event; (iii) with respect to the sale of any

Railcar, the date on which said Railcar is sold and title conveyed to the purchaser thereof; (iv) with respect to an Abatement, the date upon which such Abatement shall become effective in accordance with any Lease; and (v) with respect to a Modification Termination, the date upon which such Modification Termination shall become effective in accordance with any Lease.

"Permitted Liens" means (i) liens for Taxes not yet due and payable or being contested in good faith by appropriate and diligent legal proceedings and for which adequate reserves have been set aside in accordance with GAAP; (ii) liens arising out of any judgments or awards against the Borrower that have been adequately insured against (in the Bank's sole judgment) or with respect to which a stay of execution has been obtained pending an appeal or a proceeding for review; (iii) liens on assets hereafter acquired (other than those comprising a portion of the Collateral) in favor of purchase money security lenders; and (iv) such other imperfections of title acceptable to the Bank in its sole judgment.

"Person" means an individual, corporation, partnership, trust, estate or unincorporated organization, or a Governmental Authority.

"Promissory Notes" shall have the meaning set forth in Section 2.3.

"Purchase Agreement" means each Purchase Agreement between the Borrower and the seller or sellers of the Railcars, pursuant to which the Borrower shall acquire title to the Railcars.

"Railcars" shall have the meaning set forth in the Recitals.

"Regulatory Change" means (a) the enactment after the date hereof of any new Applicable Law, or the enactment or other effectuation of any change in any existing Applicable Law, (b) the adoption after the date hereof of any new, or the adoption or other effectuation of any change in any existing, interpretation, directive or request (whether or not having the force of law), or (c) any change in the administration or enforcement of any Applicable Law.

"Release Price" means, with respect to a Railcar the amount set forth in item 4 of the Borrowing Schedule.

"Tax" or "Taxes" means any federal, state, local or foreign tax, assessment or other governmental charge or levy upon a Person or upon its assets, revenues, income or profits.

"UCC" means the Illinois Uniform Commercial Code.

Section 1.2. Other Definitional Provisions.

(a) Except as otherwise specified herein, all references herein (1) to any Person, other than the Borrower, shall be deemed to include such Person's heirs, personal representatives, successors and assigns, (2) to the Borrower shall be deemed to include the Borrower's successors and permitted assigns, and (3) to any Applicable Law shall be deemed references to such Applicable Law as the same may be amended or supplemented from time to time.

(b) The words "herein", "hereof" and "hereunder" and words of similar import, when used in this Loan Agreement, shall refer to this Loan Agreement as a whole and not to any provision of this Loan Agreement, and "Section", "subsection" and respective references are to this Loan Agreement unless otherwise specified.

(c) Whenever the context so requires, the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa.

(d) All terms defined in this Loan Agreement shall have the defined meanings ascribed herein or, except as otherwise expressly stated therein, in any certificate, opinion or other document delivered pursuant hereto.

(e) A reference to any Contract shall include all permitted supplements and amendments thereto.

(f) When used herein, the word "or" is not exclusive and the words "include" and "including" are not limiting.

(g) All obligations set forth herein are continuing obligations.

(h) Any right provided herein may be exercised at any time and from time to time.

Section 1.3. Accounting Matters. Unless otherwise specified herein, all accounting determinations hereunder and all computations utilized by the Borrower in complying with the covenants contained herein shall be made, all accounting terms used herein shall be interpreted and all financial statements requested to be delivered hereunder shall be prepared, in accordance with GAAP.

## ARTICLE II

### MAKING OF THE LOANS

#### Section 2.1. The Loans.

(a) Generally. The Bank may make Loans to Borrower from time to time, as requested by Borrower in accordance with the terms hereof, in amounts and upon such terms and conditions as shall be determined by the Bank in its sole and absolute discretion. Each Loan shall be in the maximum principal amount of the amount applicable Promissory Note; provided, however, the maximum principal amount to be advanced under a Loan for each Railcar identified in item 1 of the applicable Borrowing Schedule shall in no event exceed the amount set forth item 2 of such Borrowing Schedule.

(b) Loan Advance Procedures. Upon the Bank's determination to make a Loan to Borrower, it shall be advanced in one installment upon (i) Borrower's identification of the Railcars on item 1 of the Borrowing Schedule, which Railcars shall be satisfactory to the Bank, in its sole discretion and free and clear of all liens and encumbrances, and (ii) satisfaction of all of the conditions set forth in Section 3.1 hereof.

Section 2.2. Transactions Between the Borrower and the Bank. In respect of any advance or other matters under or in connection with any of the transactions contemplated hereby, the Borrower hereby authorizes the Bank to accept, rely upon, act upon and comply with, any telephone, oral or written instructions, requests, confirmations and orders of any authorized employee or representative of the Borrower, until the Bank has been notified that such person is no longer authorized. The Borrower acknowledges that the transmission between the Borrower and the Bank of any such instructions, requests, confirmations and orders involves the possibility of errors, omissions, mistakes and discrepancies and agrees to adopt such internal measures and operational procedures to protect its interests. By reason thereof, the Borrower hereby assumes all risk of loss and responsibility for, releases and discharges the Bank, its officers, directors and employees, from any and all responsibility or liability for, and agrees to indemnify, reimburse on demand and hold the Bank, its officers, directors and employee, harmless from, any and all claims, actions, damages, losses, liabilities and expenses by reason of, arising out of or in any way connected with or related to (i) the Bank's acceptance, reliance and action upon, compliance with or observation of any such instructions, requests, confirmations or orders, and (ii) such errors, omissions, mistakes and



discrepancies, except those caused by the Bank's own negligence or wilful misconduct.

Section 2.3. The Promissory Notes. Each Loan shall be evidenced by a promissory note, the terms and conditions of which shall be determined by the Bank, in its sole discretion, and payable by the Borrower to the order of the Bank, substantially in the form of Exhibit A (each a "Promissory Note" and collectively, the "Promissory Notes"). Each such Promissory Note shall be dated as of the date of funding of the applicable Loan hereunder and shall be payable at the times and in the manner provided therein. The Bank shall record and, prior to any transfer of any Promissory Note, shall evidence on the schedules forming part thereof appropriate notations evidencing the date and the amount of each principal payment made by the Borrower with respect thereto. The Borrower hereby irrevocably authorizes the Bank to endorse each Promissory Note, and to attach and to make a part of each such Promissory Note, such schedules as and when required.

Section 2.4. Interest Rate. Except as otherwise provided in Section 2.7 hereof, the unpaid principal balance of each Promissory Note shall bear interest at a rate equal to the rate set forth in such Promissory Note, until paid in full.

Section 2.5. Prepayment.

(a) Optional Prepayment. The Borrower may, upon thirty (30) days' prior written notice to the Bank, prepay any Promissory Note in whole on any installment date by paying such prepayment together with all accrued but unpaid interest, and other sums due hereunder, but without any prepayment premium.

(b) Mandatory Prepayments. In the event that one or more of the Railcars is sold, becomes the subject of an Abatement or a Modification Termination, or sustains a Casualty Occurrence, the Borrower shall pay to the Bank, on the Payment Date, a sum equal to the product obtained by multiplying the number of Railcars sold, subject to an Abatement or Modification Termination, or sustaining a Casualty Occurrence, as the case may be by the applicable Release Price (the "Casualty Value"). Concurrently with each such payment, the Borrower shall file, or cause to be filed, with the Bank a certificate setting forth by road number the number the Railcars sold, subject to an Abatement or Modification Termination, or having suffered a Casualty Occurrence, as the case may be, and the amount payable as to each. Any money received by the Bank pursuant to the provisions of this Section 2.5(b) shall be applied to prepay ratably the remaining principal installments due under the applicable Promissory Note, after payment of all accrued but unpaid interest and late charges, if any, due with respect thereto. Thereafter,

the Bank shall promptly furnish to the Borrower a revised schedule of payments of principal and interest thereafter due to be made, in such number of counterparts as the Borrower may reasonably request.

Section 2.6. Payments.

(a) Form of Payment; Rental Payments.

(i) Form of Payment. All payments by the Borrower under the Promissory Notes or any of the other Loan Documents and under any instrument delivered hereunder or thereunder shall be made in lawful money of the United States of America (in immediately available and freely transferable United States Dollars) to the Bank at its office at One Mark Twain Bank Plaza, Edwardsville, Illinois 62025, free and clear of and without deduction for any and all present and future Taxes, withholdings or other charges imposed on such payment. Should any such Taxes, withholdings or other charges be imposed on any such payment, the Borrower will pay them and remit to the Bank an amount equal to what should have been received had such a Tax, withholding or other charge not been imposed.

(ii) Rental Payments. The Borrower shall direct any lessee under a Lease to pay to the Bank, and the Bank shall be entitled to demand, receive, hold and sue for payment of, the rent and other payments due under any Lease and any rent or other payments received by the Borrower during such period shall be received, and until turned over to the Bank, held by the Borrower in trust for the sole benefit of the Bank, and the Borrower agrees to immediately upon receipt of such rent or other amounts remit the same (with proper endorsement thereon if required), in their entirety, to the Bank. The Bank may hold or apply such rents or amounts received by it hereunder pursuant to the provisions of this Loan Agreement.

(b) Computation of Interest. All computations of interest shall be made by the Bank on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable.

(c) Payment on Other Than a Business Day. Whenever any payment to be made under any other Loan Documents or under any instrument delivered thereunder shall be stated to be due on a day other than a Business Day such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest.

Section 2.7. Interest on Overdue Amounts. In the event that any outstanding balance of principal, interest, fees or other amounts due hereunder is not paid when due (whether by acceleration or otherwise) (a "Default Date"), the Borrower shall pay to the Bank, upon demand, interest on the entire principal amount then outstanding and, to the extent permitted by law, on such interest, fees and other amounts, from the Default Date until such past due principal, interest, fees or other amounts are paid in full, at a fluctuating per annum rate equal to two percent (2%) per annum above the interest rate that would otherwise apply under the applicable Promissory Note (the "Default Rate"), until paid in full.

Section 2.8. Leases.

(a) Rents and Other Payments. Any rents or other sums paid under or with respect to any Lease, paid by the Borrower to the Bank pursuant to Section 2.6(a)(ii) hereof, shall be held by the Bank as part of the Collateral and, so long as no Event of Default shall have occurred, all such rents and other sums shall be paid and applied as follows:

(1) Rents. The amounts from time to time received by the Bank that constitute payment of rents under any Lease shall be applied: First, to any unpaid costs (including, without limitation, those contained in Article XI) or expenses of the Bank incurred pursuant to this Loan Agreement or the applicable Promissory Note; second, to unpaid late charges, if any, under the applicable Promissory Note; third, to all accrued but unpaid interest then due under the applicable Promissory Note; fourth, to the next due installment of principal; and fifth, any excess then remaining shall be deposited into an operating account of Borrower maintained at the Bank.

(2) Casualty Payments. Any amounts received by the Bank that constitute payment on account of a Casualty Occurrence pursuant to any Lease shall be applied: first, to unpaid costs (including without limitation, those contained in Article XI) or expenses of the Bank incurred pursuant to this Loan Agreement or the applicable Promissory Note; second, to unpaid late charges, if any, under the applicable Promissory Note; third, to all accrued but unpaid interest then due under the applicable Promissory Note; fourth, to prepayment (in whole or in part, as applicable) of the principal of the applicable Promissory Note in accordance with the provisions of Section 2.5(b) hereof; and fifth, any excess then remaining promptly shall be remitted to the Borrower (provided, however, that in the event that an instrument by which a Casualty Value payment was made is subsequently dishonored, the Borrower shall promptly refund to the Bank the amount of such excess payment).

(3) Default Payments. Any amounts received by the Bank pursuant to the exercise of the rights and remedies provided in any Lease (or otherwise available at law or in equity as a result of the occurrence of an event of default under any Lease) or after the occurrence of an Event of Default, shall be applied: first, in accordance with clause first, second and third (and in such order) of subpart (a)(2) of this Section 2.8; second, to prepayment in whole of the principal of the applicable Promissory Note; third, to pay any other sums then due and owing to the Bank; and fourth, any excess then remaining promptly shall be remitted to the Borrower (provided, however, that in the event that an instrument by which a lease default payment was made is subsequently dishonored, the Borrower shall promptly refund to the Bank the amount of such excess payment).

(b) Tax Reimbursements, etc. Any payments received by the Bank as amounts paid by any lessee pursuant to the a Lease in connection with the payment or reimbursement of Taxes, fees or other charges promptly shall be paid to the Bank to reimburse it for any amounts expended for the payment of such Taxes, fees or other charges, and thereafter, so long as the Borrower is not in Default, shall be remitted to the Borrower.

(c) Collateral Account. The Borrower shall establish and maintain an account with the Bank (the "Collateral Account") and shall, direct each lessee to make all future payments of rent, casualty value payments, excess mileage payments and other sums due and from time to time to become due under its Lease directly to the Bank, for deposit into the Collateral Account; and in furtherance thereof, shall: (i) execute and deliver to the Bank such documents as may be required to establish such account, and (ii) execute and cause each lessee and any guarantor of such Lease obligations to acknowledge a notice of assignment in substantially the form attached hereto as Exhibit B (the "Notice") and subject to the terms hereof, directing such lessee and any guarantor of such Lease obligations to make all future payments of rent, casualty value payments or proceeds, excess mileage payments and all other sums due under such Lease and/or any related guaranty directly to the Bank as provided herein. All monies on deposit in the Collateral Account shall be applied by the Bank as set forth in subsection (a) above.

Section 2.9. Evidence of Indebtedness. The Borrower's obligation to repay the Loans with interest thereon and all other sums due in connection therewith shall be evidence by this Loan Agreement, the Promissory Notes and the records of the Bank.

Section 2.10. Indemnity. The Borrower agrees to indemnify and hold the Bank harmless from and against the net cost to the Bank (as reasonably determined by the Bank) of (i) any material adverse change in the basis of taxation by any government or

taxing authority of payments of principal of or interest on any Promissory Note; and (ii) any reserve, capital, special deposit or similar requirements, taxes or other charges or any other requirements imposed or implemented by any government or governmental regulatory authority (whether or not having the force of law) after the date of this Loan Agreement on any Loan, any Promissory Note or any other agreement executed and/or delivered in connection herewith or any deposits or other funds acquired by the Bank to make any Loan, which requirements, taxes or charges have the effect of increasing the cost to the Bank of making and/or maintaining or continuing a Loan; provided, however, that the Bank shall use its efforts to minimize the effect of such events on the Borrower; and provided, further, that, if by the provisions of any Applicable Law, regulations or order, the payment or reimbursement of any such net cost cannot be legally made or if the Borrower notifies the Bank of its election to prepay a Loan in order to avoid having to pay on an ongoing basis such additional costs, then within thirty (30) days thereafter, the Borrower shall prepay the whole (but not a part) of the outstanding principal amount of such Loan, such prepayment to be accompanied by all accrued but unpaid interest to the date of such prepayment and of all other amounts owing to the Bank pursuant to this Loan Agreement, the applicable Promissory Note or any other agreement executed and/or delivered in connection herewith, as well as such amounts as the Bank shall deem necessary to compensate the Bank for any loss or net cost or expense reasonably incurred by the Bank due to the occurrence of any such prepayment during an interest period, whereupon the Bank's obligations to continue to make such Loan available shall forthwith terminate.

Section 2.11. All Loans to Constitute One Obligation. All Loans and all other Obligations of the Borrower hereunder shall constitute one general obligation of Borrower, and shall be secured by the Bank's security interest in and Lien upon all of the Collateral, and by all other security interests and Liens heretofore, now or at any time or times hereafter granted by Borrower to the Bank.

### ARTICLE III

#### CONDITIONS TO MAKING OF THE LOANS

##### Section 3.1. Conditions Precedent.

(a) Loan Agreement. The Bank's obligation to enter into this Loan Agreement and the transactions contemplated hereby is subject to its prior receipt of each of the following, in form and substance satisfactory to the Bank:

(i) A certificate of the Secretary or Assistant Secretary of the Borrower substantially in the form of Schedule 3.1(a)(i) with respect to the officers of the Borrower authorized to execute and deliver this Loan Agreement and the other applicable Loan Documents, to which shall be attached copies of the articles of incorporation, bylaws and resolutions referred to in such certificate.

(ii) A good standing certificate with respect to the Borrower, issued as of a recent date by the Secretary of State of Illinois.

(iii) Five (5) originally executed counterpart copies of this Loan Agreement.

(iv) Four (4) originally signed copies of the opinion of Borrower's counsel, each dated the date hereof, substantially in the form of Schedule 3.1(a)(iv).

(v) The Guaranty, duly executed by the Guarantors.

(b) Each Loan. The Bank's obligation to make a Loan shall be subject to its prior receipt of each of the following, in form and substance satisfactory to the Bank, and shall be further subject to no Default or Event of Default having occurred hereunder:

(i) The applicable Promissory Note, duly executed on behalf of the Borrower.

(ii) The completed Borrowing Schedule.

(iii) A good standing certificate with respect to the Borrower, issued as of a recent date by the Secretary of State of Illinois.

(iv) (A) Copies of all insurance policies and endorsements thereto of the Borrower or any lessee, as the case may be, covering the Railcars showing that there exists adequate liability and casualty insurance coverage, including casualty insurance in an amount at all times equal to the replacement cost of a railcar comparable in age and condition to the subject Railcar and (B) loss payable endorsements in favor of the Bank with respect to all casualty insurance.

(v) Four (4) originally signed copies of a supplemental opinion of Borrower's counsel, each dated the date of funding of the applicable Loan, substantially in the form of Schedule 3.1(a)(iv).

(vi) Copies of appropriate financing statements on Form UCC-1, duly executed by the Borrower, and any amendments thereto, duly filed in such office or offices as may be necessary or, in the opinion of the Bank or its counsel, desirable to perfect the security interests granted hereunder, along with the recordation of this Loan Agreement or any amendment thereto with the ICC, and the completion of all other acts necessary under applicable law for the Bank to receive a first perfected security interest in such Collateral, as the Bank and its counsel shall determine.

(vii) Copies of appropriate informational filings on Form UCC-1, duly executed by the Borrower and any lessee of the Railcars.

(viii) The originally executed chattel paper copy of any Lease, with evidence of Borrower's good title to the applicable Railcars and the purchase price therefor, the appropriate chattel paper receipt, together with a certification from the Borrower that each such Lease is in full force and effect and subject to no defenses, offsets or counterclaims.

(ix) Two originally executed copies of the Notice, duly executed by any lessee.

(x) Uniform Commercial Code lien searches of the financing statement records maintained by the Secretary of State of Illinois, the Clerk of the Circuit Court of Madison County, Illinois and any other jurisdictions as the Bank shall determine in its sole discretion listing all filings of record against the Borrower, or any owner or prior owner of a Railcar, as well as tax, judgment and pending litigation searches in the same jurisdictions.

(xi) At the Bank's option, the written consent of each Guarantor to the Loan and the transactions related thereto.

(xii) Searches of the records of the ICC listing all filings of record against the Borrower, or any owner or prior owner of a Railcar.

(xiii) Such other documents, instruments and agreements as the Bank shall reasonably request in connection with the foregoing matters.

(xiv) The Payment to the Bank in cash or other immediately available funds and required closing fee.

(xv) Other Conditions. In addition to the foregoing, the Bank's obligation to make a Loan shall be subject to the following conditions having been satisfied, in the sole discretion of the Bank:

(A) Since the date of this Loan Agreement (in the case of the initial Loan hereunder), and since the date of the immediately preceding date of funding of a Loan (in the case of each subsequent Loan), there shall not have occurred any material adverse change in the business, financial condition or results of operations of Borrower; and since such date, there shall not have occurred any material adverse change in the existence or value of any Collateral, or any event, condition or state of facts which would reasonably be expected materially and adversely to affect the actual or prospective business, financial condition or operations of Borrower; and

(B) No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain or prohibit, or to obtain damages in respect of, or which is related to or arises out of this Loan Agreement, any other Loan Document or the consummation of the transactions contemplated thereby or which, in the Bank's sole discretion, would make it inadvisable to consummate the transactions contemplated by this Loan Agreement or any of the other Loan Documents.

#### ARTICLE IV

##### SECURITY

In order to secure the prompt payment of the principal of and interest on the Promissory Notes (whether now or hereafter outstanding) and of all of the Borrower's other Obligations, and the timely and faithful performance and observance by the Borrower of all of the agreements, covenants and provisions contained in this Loan Agreement, the Promissory Notes and the Loan Documents:

Section 4.1. Collateral. The Borrower hereby grants, conveys, pledges, mortgages, assigns, transfers and sets over to the Bank, and does hereby grant the Bank a continuing, first priority security interest in and to, and chattel mortgage lien on, all of the Borrower's right, title and interest in and to the following collateral (the "Collateral"), to have and to hold all and every part of the Collateral unto the Bank, its successors and assigns, for its and their own use and benefit forever:



(a) the Railcars;

(b) all improvements, additions, modifications, accessions, equipment, appurtenances and parts appertaining, or attached to the Railcars, whether now owned or hereafter acquired, and all substitutions and replacements of the Railcars described above (the Railcars and the equipment described in this subsection (b) herein being hereinafter sometimes collectively called the "Equipment Collateral");

(c) all proceeds, rentals, casualty value payments or proceeds, settlement payments and requisition compensation from the sale, loss or other disposition of the Equipment Collateral;

(d) all rights, claims and causes of action, if any, that the Borrower may have now or in the future against any seller of the Railcars under the applicable Purchase Agreement or any manufacturer or re-builder of the Equipment Collateral (or any component thereof) or any other party, by Contract or otherwise, in respect of any defect in the Equipment Collateral or any part thereof;

(e) any agreement now or hereafter entered into for leasing, use or hire of the Railcars to any third party, including, without limitation, any Lease, together with all of the Borrower's right, title, interest, claims and demand in, to and under said agreements, including all extensions, renewals and replacements thereof, together with all rights, powers, privileges, options, and other benefits of the Borrower, including, without limitation, the right to receive all notices, give consents, exercise any election or option, declare defaults and demand payments with respect thereto;

(f) all rent, issues, income, profits, damages and other moneys from time to time payable to or receivable by Borrower in respect of the Equipment Collateral;

(g) all monies and other funds from time to time on deposit in the Collateral Account, all interest payable thereon, all rights and privileges incident thereto;

(h) all proceeds (cash and non-cash) thereof; and

(i) all books and records relating to any of the foregoing.

Section 4.2. The Bank as Agent. The Borrower hereby appoints the Bank, its successors and assigns, the true and lawful attorney of the Borrower, irrevocably and with full power of substitution, in the name of the Borrower or otherwise, (a) to demand, receive, compromise, sue for, and give acquittance for,

any and all rents, profits, moneys and claims for money due and to become due with respect to the Collateral or otherwise arising out of this Article IV; (b) to endorse any checks or other instruments or orders in connection therewith; and (c) following a Default or an Event of Default and during the continuance thereof, to make all waivers and agreements and to file any claims or take any actions or institute any proceedings with respect thereto that the Bank may deem reasonably necessary or advisable.

Anything herein contained to the contrary notwithstanding, neither the Bank nor its nominee or assignee shall have any obligation or liability by reason of or arising out of this Article IV to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amount to which it may be entitled at any time or times by virtue of this Article IV.

Section 4.3. Perfecting Interest in Collateral. The Borrower shall, from time to time and at its sole cost and expense, promptly execute, acknowledge, witness, deliver, file and/or record, or procure the execution, acknowledgement, witnessing, delivery, filing and/or recording of, such documents or instruments, and shall take or cause to be taken such other actions, as the Bank may reasonably request for the perfection against the Borrower and all third parties whomsoever of the security interest created by this Article IV, of the rights and powers herein granted to the Bank and for the continuation and protection thereof and promptly give to the Bank evidence satisfactory to the Bank of such delivery and filing and/or recording. Without limiting the generality of the foregoing, the Borrower shall from time to time and at any time execute, acknowledge, witness and deliver such financing and continuation statements, notices and additional security agreements, make such notations on its records and take such other action as the Bank may reasonably request for the purpose of so perfecting, maintaining and protecting such security interest of the Bank, and shall cause this Loan Agreement and each such financing and continuation statement, notice and additional security agreement to be filed or recorded in such manner and in such places as may be required by Applicable Law and as the Bank may reasonably request for such purpose. The Borrower hereby authorizes the Bank to effect any filing or recording which the Bank has requested pursuant to this Section 4.3 without the signature of the Borrower to the extent permitted by Applicable Law. The costs and expenses of the Bank with respect to such actions shall be payable by the Borrower on demand with interest thereon at the Default Rate from the date incurred until paid in full.

Section 4.4. Disclaimer by the Bank. The Bank makes no representations or warranties with respect to the Collateral or any part thereof. The Bank shall not be chargeable with any obligations or liabilities of the Borrower with respect to the Collateral. The Bank shall have no liability or obligation' arising out of any claims, known or unknown, with respect to the Collateral.

Section 4.5. Release of Collateral. Upon the indefeasible payment in full of all sums due under the Promissory Notes and discharge of all of the Borrower's Obligations, the Bank shall release, at the Borrower's sole cost and expense, any and all security delivered pursuant to this Loan Agreement and the other Loan Documents. Furthermore, upon payment of the Release Prices set forth in the applicable Borrowing Schedules, the Bank shall release, at the Borrower's sole cost and expense, the applicable Railcars and collateral related specifically to such Railcars.

## ARTICLE V

### USE AND MAINTENANCE

Section 5.1. Maintenance. During the term hereof:

(a) The Borrower shall not use, and shall cause each lessee and permitted sublessee of any of the Railcars not to use, the Railcars for the transportation of any chemical, chemical compound or substance not listed in CHEMCYCLOPEDIA (Vol. 8, 1990 edition) and Borrower shall use, and shall cause each lessee and permitted sublessee of any of the Railcars to use the Railcars in the manner for which they were designed and intended so as to subject them only to reasonable wear and tear from proper use alone excepted. The Railcars shall not be used in any manner that is in violation of, or more hazardous than permitted by, the insurance maintained under Section 6.1. The Borrower agrees that it will not, and will cause each lessee and permitted sublessee not, to discriminate against any Railcar (as compared to other similar equipment owned or leased by it) with respect to its use, operation or maintenance in contemplation of the expiration or termination of any Lease.

(b) At its own expense, the Borrower shall maintain, service, repair, overhaul and keep, and/or cause each lessee and permitted sublessee of any of the Railcars to maintain, service, repair, overhaul and keep, each of the Railcars and the component parts thereof in good operating condition and repair suitable for the commercial use as originally designed and intended (i) in accordance with prudent Class 1 railroad industry maintenance practices and the maintenance practices used by it, any lessee or

any permitted sublessee (as the case may be) of any of the Railcars in respect of equipment owned or leased by it, by any lessee or by any permitted sublessee (as the case may be) similar in nature to the Railcars, (ii) in compliance with all Applicable Laws, and (iii) eligible for railroad interchange in the hands of the Borrower or any lessee and permitted sublessee of any of the Railcars in accordance with the interchange rules of the United States Department of Transportation, the Federal Railroad Administration, the ICC and the Association of American Railroads, to the extent applicable. The Borrower shall perform, and/or cause each lessee and permitted sublessee of any of the Railcars to perform, all inspections of the Railcars and maintain all records, logs and other materials required to be maintained in respect of the Railcars by the United States Department of Transportation or any other Governmental Authority having jurisdiction over it, any lessee or any permitted sublessee (as the case may be) of the Railcars.

(c) The Borrower shall not make, nor permit any lessee or any permitted sublessee of any of the Railcars to take any additions, improvements, modifications or alterations to any Railcar unless consented to in writing by the Bank and the same are readily removable without causing material damage to such Railcar or otherwise adversely affecting the value and/or utility of such Railcar.

Section 5.2. Use and Possession in Railroad Operations. So long as no Default or Event of Default shall have occurred, the Borrower, any lessee or permitted sublessee of any of the Railcars shall be entitled to the possession of the Railcars and to the use thereof upon the lines of railroad owned or operated by it, by any rail carrier, any lessee, by any permitted sublessee or any affiliates thereof, or upon lines of railroad over which it, any rail carrier, such lessee, such permitted sublessee or any affiliate thereof has trackage or other operating rights or over which their railroad equipment is regularly operated pursuant to Contract, or upon connecting and other carriers' trackage in the usual interchange of traffic or pursuant to run-through or pooling arrangements, but only upon and subject to all the terms and conditions of this Loan Agreement. Notwithstanding the foregoing or any other provision hereof to the contrary, the Borrower shall neither assign or permit or suffer the assignment of any Railcar to service (including run-through services), nor locate or permit or suffer the location of any Railcar, outside the continental United States of America, Canada or Mexico, provided, however, that any such use in Canada or Mexico shall be on an incidental and temporary basis only and in any event, Borrower agrees that no Railcar shall be used outside the United States for more than one hundred eighty-two (182) days during any calendar year, and further provided, that Bank shall receive an opinion of counsel

or other reasonable assurance, in form and substance satisfactory to Bank and its counsel, within thirty (30) days of the date hereof, that Bank's lien on any Railcar outside the United States shall remain perfected at all times.

Section 5.3. Marking of Railcars. The Borrower shall, at its sole cost and expense, cause the Railcars to be kept numbered with the identifying road numbers set forth in item 1 of the Borrowing Schedule, and to keep and maintain marked, plainly, distinctly, permanently and conspicuously by a plate or stencil printed in contrasting colors upon each side of each Railcar in letters not less than one inch in height the words "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission" or other appropriate markings approved in writing by the Bank, with appropriate changes thereof and additions thereto as from time to time may be required by Applicable Law in order to protect the Bank's security interest in the Equipment Collateral, including, but not limited to, the Railcars and its rights under this Loan Agreement. The Borrower shall, at its sole cost and expense, cause any such markings that may be removed, defaced, obliterated or destroyed to be promptly replaced and shall not change, or permit the Railcars to change the numbers of the Railcars unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Bank and filed, recorded and deposited by the Borrower in all public offices where this Loan Agreement shall have been filed, recorded and deposited and (ii) the Borrower shall have furnished the Bank an opinion of counsel to the effect that such changes have not impaired the Bank's duly perfected, first priority security interest in, and lien on, the Collateral.

Section 5.4. Prohibition against Certain Designations. Unless mutually agreed upon by the Bank and the Borrower, the Borrower will not allow the name of any Person other than the Borrower to be placed on any of the Railcars as a designation that might be interpreted as a claim of ownership; provided, however, that the Borrower may permit a lessee or any permitted sublessee of any of the Railcars to cause the Railcars to be lettered with the names or initials or other insignia customarily used by such lessee or permitted sublessee (as the case may be) on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Railcars as permitted by the applicable Lease.

Section 5.5. Registration of Equipment Collateral. The Borrower shall, at its sole cost and expense, register or cause to be registered the Railcars and any substitute or replacement equipment in accordance with any and all applicable federal, state, and local registration requirements of the Association of American Railroads, the United States Department of Transportation, and the ICC.

Section 5.6. Rules, Laws and Regulations. The Borrower shall comply, and will use its best efforts to cause each lessee and any permitted sublessee of any of the Equipment Collateral to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment Collateral), with all Applicable Laws, including all interchange rules of the Association of American Railroads and all rules and regulations of the United States Department of Transportation, the Federal Railroad Administration, and the ICC or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment Collateral. In case any equipment or appliance is required to be altered, added, replaced or modified on any Railcar in order to comply with such Applicable Laws, at its own expense, the Borrower agrees to make, or cause any lessee or any permitted sublessee (as the case may be) of the Railcars to make, such alterations, additions, replacements and/or modifications and title thereto shall be immediately vested in the Borrower, free and clear of any liens or encumbrances other than the lien of the Bank; provided, however, that the Borrower, any lessee or any permitted sublessee (as the case may be) may, in good faith, contest the validity or application of any such Law in any reasonable manner which does not, in the sole opinion of the Bank, adversely affect any of its rights hereunder or the Collateral.

## ARTICLE VI

### INSURANCE AND CASUALTY

Section 6.1. Insurance. The Borrower, at its sole cost and expense, will carry and maintain, or shall cause any lessee and/or any permitted sublessee of any of the Railcars, at its own cost and expense, to carry and maintain:

(i) all risks property insurance with respect to each Railcar in an amount equal to its Casualty Value, with a deductible not in excess of \$2,000 per occurrence;

(ii) commercial general public liability insurance with respect to third party personal, bodily injury including death, property damage, liability (including contractual liability and cross liability), in each case with deductibles not in excess of \$25,000 per occurrence and in such amounts of not less than \$1,000,000 per occurrence; and

(iii) insurance required under the Workers' Compensation Act for employee injury or death or

occupational disease, and Workers' Compensation Insurance as required by law.

Each policy of insurance shall:

(a) be issued by one or more recognized, financially sound and responsible insurance companies approved by the Bank, which are qualified or authorized by the Applicable Laws of the states in which the Borrower does business to assume the risks covered by such policy, and rated "B+" or higher by A.M. Best Company Best's Insurance Guide and Key Ratings;

(b) with respect to the property insurance, have attached thereto standard non-contributing, non-reporting mortgagee clauses in favor of and entitling the Bank without contribution to collect any and all proceeds payable under such insurance;

(c) provide that the Bank shall be given at least thirty (30) days' prior written notice of the effective date of cancellation or material change in coverage;

(d) provide that insurance as to the interest of the Bank shall not be invalidated by any actions, inactions, breaches of warranty or conditions, or negligence of the Borrower, the lessee or any permitted sublessee of any of the Railcars or any other Person with respect to each such policy and that any loss otherwise payable thereunder shall be payable notwithstanding any such actions, inactions, breaches or negligence of the Borrower, any lessee or any permitted sublessee of any of the Railcars or any other Person that might, absent such provision, result in a forfeiture of all or a part of such insurance payment, which insurance shall provide the insurer's waiver of its right of subrogation, set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability against the Borrower and provide that there is no recourse against the Bank or any assignee for payment of premium, commissions, direct calls, assessments or advances;

(e) be in amounts not less than and insure against such risks so as to be no less protective than the insurance, if any, maintained by the Borrower, any lessee or any permitted sublessee of any of the Railcars with respect to similar equipment which it owns or leases;

(f) be consistent with prudent railroad industry practice and otherwise be in form and content satisfactory to the Bank; and

(g) insure against such further risks as the Bank may reasonably specify from time to time.

The Borrower shall furnish the Bank with certificates or other evidence satisfactory to it of the maintenance of the insurances so required.

The Borrower shall immediately notify the Bank of any cancellation, alteration or non-renewal of any of such insurance policies. The Borrower shall promptly pay, or cause to be paid, all premiums when due on such insurance and, not less than thirty (30) days prior to the expiration date of each such policy or policies, the Borrower shall deliver, or cause to be delivered, to the Bank a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to the Bank. No policy of insurance shall be written such that the proceeds thereof will produce less than the minimum coverage required by this Section by reason of co-insurance provisions or otherwise. The Bank shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (1) the existence, non-existence, form or legal sufficiency thereof, (2) the solvency of any insurer, or (3) the payment of losses.

If the Borrower fails to maintain the insurance required by this Section 6.1, the Bank may procure such insurance (but is not obligated to do so) and the cost of such insurance shall be secured hereby and will be payable to the Bank on demand with interest at the Default Rate from the date incurred until paid in full. The Borrower agrees that the proceeds of all such insurance, if any loss should occur, shall be applied in accordance with Section 2.5(b) to the extent applicable and otherwise to the payment of any or all of the Obligations hereby secured or to the cost, in whole or in part, of the repair, restoration and replacement of the property damaged or destroyed (without obligation to see that the funds are so applied), as the Bank may elect or direct in its sole discretion. The Bank shall have the right, in the Borrower's name, any lessee's or any permitted sublessee's name or in its own name, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be made thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents as may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

Section 6.2. Duty of Borrower to Notify Bank of a Casualty Occurrence, Modification Termination or Abatement. In the event (a) (i) of the loss or theft of any Railcar, (ii) of the actual or constructive total loss of any Railcar, (iii) of the destruction of any Railcar or damage thereto to such extent as shall make repair thereof uneconomical or shall render the Railcar permanently unfit for normal use for any reason whatsoever, (iv) any Railcar shall be worn out, (v) title to or use of any Railcar shall be requisitioned or taken by any Governmental Authority



under the power of eminent domain or otherwise, (vi) any Railcar shall have been returned permanently to the Borrower pursuant to a material breach of a warranty of the Borrower, or (vii) the use of any Railcar in the normal course of interstate rail transportation shall have been prohibited as a result of any rule, regulation, order or other action by a United States Governmental Authority for a continuous period (any such occurrence being hereinafter called a "Casualty Occurrence"), or (b) a Modification Termination or (c) an Abatement occurs, the Borrower shall promptly, and in any event within thirty (30) days after the occurrence thereof, notify the Bank of such Casualty Occurrence, Modification Termination or Abatement (as the case may be) and shall pay to the Bank, in accordance with the terms of Section 6.3 hereof, the Casualty Value thereof.

Section 6.3. Sum Payable As a Result of a Casualty Occurrence, a Modification Termination or an Abatement. The Borrower shall pay to the Bank, on the Payment Date, a sum equal to the Casualty Value of such Railcar(s) sustaining a Casualty Occurrence, a Modification Termination or an Abatement (as the case may be). Notwithstanding the foregoing, so long as any Railcars continue to be leased to a lessee pursuant to a Lease, (a) the Borrower shall, pending its payment to the Bank of said Casualty Value, continue to pay to the Bank, at the times as in the amounts specified in the applicable Promissory Note, all installment payments due from time to time due thereunder; and (b) the Borrower shall not be obligated to pay the Casualty Value for any Railcar sustaining a Casualty Occurrence, if, on or before the due date therefor, the Borrower replaces such Railcar and obtains the prior written consent of the Bank (which consent may be withheld in the Bank's sole discretion generally, and be subject to the satisfaction of various conditions thereto established by the Bank pertaining to the value of and title to the Railcar and such other matters as the Bank may then deem appropriate).

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to enter into this Loan Agreement and to make the Loans, the Borrower hereby represents and warrants that as of the date hereof:

Section 7.1. Organization: Power: Qualification. It is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois; has the full power and authority to own its properties and to carry on its business as now being and hereafter proposed to be conducted; and is duly qualified and is in good standing as a foreign corporation, and

authorized to do business, in all jurisdictions in which the character of its properties or the nature of its business requires such qualification or authorization.

Section 7.2. Authorization of and Compliance with this Loan Agreement, Other Loan Documents and Borrowing. It has the full power, and has taken all necessary corporate (including stockholder, if necessary) action to authorize it to execute, deliver and perform this Loan Agreement and the other Loan Documents in accordance with their respective terms and to borrow hereunder the amount of the Loans. This Loan Agreement and the other Loan Documents have been duly executed and constitute legal, valid and binding agreements of the Borrower, enforceable against the Borrower in accordance with the terms thereof except to the extent the enforceability thereof may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally or by general principles of equity (whether such enforceability is considered a proceeding in equity or at law). The execution, delivery and performance of this Loan Agreement and the other Loan Documents in accordance with their respective terms, and the borrowing hereunder, do not and will not (a) require (i) any consent or approval of the stockholders or holders of any indebtedness of the Borrower, or (ii) any Governmental Approval that has not been obtained and is not listed on, and a copy (certified in the case of Governmental Approvals) of which is not attached to Schedule 7.2; (b) violate or conflict with, result in a breach of, or constitute a default under, (i) any Contract to which the Borrower is a party or by which the Borrower or its properties may be bound or affected, or (ii) any Applicable Law, the failure to comply with which would have a Materially Adverse Effect upon the Borrower or upon its assets; or (c) result in or require the creation of any Lien upon any assets of the Borrower other than Permitted Liens.

Section 7.3. Litigation. Except as set forth in Schedule 7.3, there are not, in any court or before any arbitrator of any kind or before or by any Governmental Authority or non-Governmental Authority, any actions, suits or proceedings pending, or, to the knowledge of the Borrower, threatened (nor, to the knowledge of the Borrower, is there any basis therefor probable of assertion against or in any other way relating to or affecting (a) the Collateral, or (b) this Loan Agreement or any of the other Loan Documents.

Section 7.4. No Conflicting Agreements. The execution, delivery or performance of the terms of this Loan Agreement or of any of the other Loan Documents executed and delivered by the Borrower will not violate, conflict with, be prevented by, result in a breach of or constitute a default under any (a) agreement of any kind among the stockholders of the Borrower, (b) provision of the articles of incorporation or bylaws of the Borrower, (c) pro-

vision of any existing mortgage, deed of trust, Contract, lease, security agreement, indenture or other agreement binding on the Borrower or affecting any of its property, or (d) Applicable Law, binding upon the Borrower.

Section 7.5. Taxes. It has filed all required federal, state and local tax returns and has paid all Taxes as such Taxes have become due, prior to the date on which penalties attach thereto unless and to the extent only that (a) the Taxes are currently being contested in good faith, by appropriate and diligent legal proceedings, and (b) adequate reserves therefor have been established by the Borrower for the payment thereof as required under GAAP.

Section 7.6. No Adverse Fact. No fact or circumstance is known to the Borrower, which, either alone or in conjunction with all other such facts and circumstances known to the Borrower, has had or might in the future have (so far as the Borrower can foresee) a Materially Adverse Effect upon the Borrower's performance of its obligations under this Loan Agreement or the other Loan Documents or upon the Collateral.

Section 7.7. No Default, etc. No Default or Event of Default has occurred and is continuing. The Borrower is not in default of the material terms of any material agreement or instrument, or of any order, injunction or decree of any court or Governmental Authority, binding upon it or to which it is a party which would either directly or indirectly impair or otherwise affect the Bank's security interest in, and rights with respect to, the Collateral or have a Material Adverse Effect on its ability to perform its obligations hereunder.

Section 7.8. Financial Condition. The financial statements of the Borrower most recently submitted to the Bank are true, complete and correct in all material respects and, in the opinion of the Borrower, fairly and accurately present the financial condition of the Borrower as of the dates thereof and for the periods referred to therein and have been prepared in accordance with GAAP throughout the periods involved. There are no material liabilities, direct or indirect, fixed or contingent, of the Borrower except as reflected in such financial statements or in the notes thereto. There has been no material adverse change in the financial statements (and to the Borrower's knowledge, no such material adverse change is pending, threatened or contemplated), and the Borrower has not guaranteed the obligations of, or made any investments in or advances to, any Person except as disclosed in such financial statements.

Section 7.9. Full Disclosure. The financial statements referred to in Section 7.8 do not, nor does this Loan Agreement, nor do any written statements furnished by the Borrower to the

Bank in connection with the making of the Loan, contain any untrue statement of fact or omit a fact necessary to make the statements contained therein or herein not materially misleading. There is no fact that the Borrower has not disclosed to the Bank in writing that materially affects, or will or could prove to materially affect, the Borrower's assets or the business, prospects, profits or condition (financial or otherwise) of the Borrower or the ability of the Borrower to perform its obligations hereunder or under any Of the Loan Documents.

Section 7.10. Regulatory Approvals. All Governmental Approvals necessary for the execution, delivery and performance of this Loan agreement and each of the other Loan Documents have been obtained and remain in full force and effect.

Section 7.11. Collateral. Except for the lien in favor of the Bank, on the date of funding of the Loan hereunder the Borrower has good and marketable title to the Collateral, free and clear of any and all Liens. The purchase price paid by the Borrower for the Collateral was equal to its then fair market value.

Section 7.12. Principal Place of Business; Location of Books and records. The principal place of business and chief executive office of the Borrower is at One Mark Twain Bank Plaza, Edwardsville, Illinois 62025. The books and records of the Borrower are located at such address and are not subject to the control of any Person other than the Borrower and its employees for the purposes of administration, servicing, collection or otherwise, nor does any other Person have any interest therein.

Section 7.13. Nature of Loan; Usury. The Borrower is a business or commercial organization, and the Loans are being made solely for the purpose of carrying on its business. The rate of interest charged on the Loans do not and will not violate any usury law or interest rate limitation.

Section 7.14. ERISA. With respect to any "pension plan" as defined in Section 3(2) of ERISA, no plan is now or previously has been maintained or contributed to by, (a) the Borrower, (b) any member of a "controlled group" of corporations (as defined in Section 414(b) of the Code) that includes the Borrower, (c) any trade or business (whether or not incorporated) that is under "common control" (as defined in Section 414(c) of the Code) with the Borrower, (d) any organization (whether or not incorporated) which is a member of an "affiliated service group" (as defined in Section 414(m) of the Code) that includes the Borrower, or (e) any other entity required to be aggregated with the Borrower pursuant to the regulations under Section 414(o) of the Code (hereinafter, an entity referred to in (b), (c) and/or (e) is referred to as a "Commonly Controlled Entity").

Section 7.15. Parsons Guaranty. The Guaranty is in full force and effect, and is enforceable against the Guarantors in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally. To the best of their knowledge, the Guarantors are in compliance with the terms of the Guaranty and the Guarantors have no defenses, offsets or counterclaims which it could assert as a bar to payment or performance of any of its obligations thereunder.

Section 7.16. Recitals. The Recitals to this Loan Agreement are true and accurate in each and every respect and are all incorporated by reference herein.

Section 7.17. Reaffirmation. Each request for a Loan made by Borrower pursuant to this Loan Agreement shall constitute (i) an automatic representation and warranty by Borrower to the Bank that there does not then exist any Default or Event of Default and (ii) a reaffirmation as of the date of said request of all of the representations and warranties of Borrower contained in this Loan Agreement and the other Loan Documents.

## ARTICLE VIII

### AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that so long as any of the Obligations remains outstanding, the Borrower shall:

Section 8.1. Valid Existence. Maintain at all times its valid corporate existence in the State of Illinois and shall qualify or register to do business as a foreign corporation in each jurisdiction in which the character of the property owned by it or in which the transaction of its business makes such qualification necessary.

Section 8.2. Payment Taxes and Claims. Pay or discharge when due, or use its best efforts to cause each lessee and any permitted sublessee of any of the Railcars to pay or discharge when due, all Taxes and all claims which might become a Lien on the Equipment Collateral as the same become due prior to the date on which the Borrower, such lessee or such permitted sublessee (as the case may be) is contesting in good faith, by appropriate and diligent legal proceedings and with respect to which the Borrower, such lessee or such permitted sublessee (as the case may be) has established adequate reserves in accordance with GAAP.

Section 8.3. Visits and Inspections. Permit, and use its best efforts to cause each lessee and any permitted sublessee of

any of the Railcars to permit, representatives (whether or not officers or employees) of the Bank, from time to time, as often as may be reasonably requested to (a) visit and inspect the Equipment Collateral wherever the same may be located from such books, logs and records related thereto, (b) make extracts from such books, logs and records, and (c) discuss with its principal officers and its independent agents any questions that the Bank may have with respect to the same.

Section 8.4. Encumbrances. Immediately pay or discharge any and all sums claimed by any party from, through or under the Borrower which, if unpaid, might become a Lien on or with respect to the Collateral or any unit thereof, and will promptly discharge any such Lien or other Lien which arises, attaches to, or affects the Collateral, except for any such claims or Liens which Borrower is contesting in good faith by appropriate legal proceedings so long as the Borrower's participation in such proceedings shall operate to prevent the collection of such claim or enforcement of such Lien or any material risk thereof or of any seizure, forfeiture or other loss of possession or rights in any of the Collateral and Borrower has given Bank such additional collateral as Bank reasonably demands as security for the Obligations, taking into account the circumstances affecting the Collateral that is subject to such claim or Lien. Borrower shall also cause any lessee or any permitted sublessee (as the case may be) of any Railcar to do the same.

Section 8.5. Repossession of Railcars. Immediately upon the request of the Bank, exercise any rights it may have to repossess the Railcars covered by any Lease, pursuant to the Section 1168 of Title 11 of the United States Code or any successor statute, if applicable.

Section 8.6. Compliance with AAR Regulations, etc. Comply, and use its best efforts to cause each lessee and any permitted sublessee of any of the Railcars to comply, with the rules and regulations of the Association of American Railroads and successor organization thereof, the United States Department of Transportation, the Federal Railroad Administration and the ICC, as they relate to or affect the Equipment Collateral.

Section 8.7. Preservation of Licenses. Preserve and maintain all of its other franchises, licenses, rights and privileges, the absence of which would have a Materially Adverse Effect on the financial condition or business operations of the Borrower or on the value of the use of the Borrower's assets.

Section 8.8. Books and Records. (a) keep and maintain accurate books and records in accordance with GAAP, (b) unless the Bank shall otherwise consent in writing, keep and maintain all such books and records only at the address of the Borrower

listed above and only in appropriate containers in safe places, and (c) so long as the Bank has given the Borrower twenty-four (24) hours advance notice thereof, permit any Person designated by the Bank to enter its premises and examine, audit and inspect the books and records at any reasonable time and from time to time without notice.

Section 8.9. ERISA. (a) With respect to any "pension plan" that the Borrower and/or any Commonly Controlled Entity maintains or contributes to, either now or in the future: (1) maintain such bonding for the Borrower and its employees and agents and every fiduciary of the "pension plan" and every Person who handles "pension plans" monies as is required under Section 412 of ERISA; and (2) deliver to the Bank, as soon as practicable and in any event within fifteen (15) days after the Borrower or any Commonly Controlled Entity knows or has reason to know that a "reportable event" has occurred or is likely to occur, a certificate signed by the Borrower's principal financial officer setting forth the details of such "reportable event"; and (b) on the Bank's request, deliver to the Bank a copy of the most recent actuarial report, financial statements and annual report completed with respect to any "defined benefit plan," as defined in Section 3(35) of ERISA, or any "defined contribution plan," as defined in Section 3(34) of ERISA.

Section 8.10. Environmental Covenants.

(a) Notice. Immediately notify the Bank if the Borrower, or to its knowledge any lessee or any permitted sublessee (as the case may be) of any of the Railcars, (1) generates, produces, manufactures, processes, refines, handles, transfers, transports, treats, stores, recycles or disposes of Hazardous Substances; (2) receives notice from any Person that it is a potentially responsible party under CERCLA or is potentially liable under any of the other Environmental Laws; (3) receives notice from any Person of any claim proceeding, litigation, order, directive, or request for information regarding environmental matters; (4) receives notice from any Person of any alleged violation of any of the Environmental Laws; or (5) receives any information concerning any potentially adverse environmental information concerning any potentially adverse environmental condition, including, but not limited to, any Contamination, for which the Borrower, any lessee or any permitted sublessee of any of the Railcars may be liable in whole or in part; provided, that the Borrower shall not have any duty to make any inquiry with respect to the operations of any lessee or any permitted sublessee generally (and not as they apply to the Railcars), to satisfy its obligations under this paragraph (a).

(b) Hazardous Substances. Conduct its business, and use its best efforts to cause any lessee and any permitted sublessee (as the case may be) of any of the Railcars to conduct its business, in compliance with the Environmental Laws and shall use its best efforts to not, and shall cause any lessee and any permitted sublessee of any of the Railcars not to, generate, treat, produce, store, handle, transfer, process, transport, dispose, recycle or otherwise release Hazardous Substances if by doing so the Borrower, any lessee or any permitted sublessee (as the case may be) (1) creates or causes a Contamination, (2) incurs any form of liability, direct or indirect, or (3) contravenes or violates any of the Environmental Laws; provided that the Borrower's obligation to cause any lessee or any permitted sublessee (as the case may be) to comply with the Environmental Laws shall be limited to those laws that, if violated, might result in either (i) liability being imposed against the Bank (or any person affiliated with the Bank) or the Borrower, or (ii) the Railcars being subject to any risk of contamination, lien, loss, seizure, forfeiture or other harm, or (iii) any other event that could result in a Default or Event of Default hereunder or the Bank's being otherwise harmed thereby.

Section 8.11. Taxes. Pay all Taxes in connection with the issuance, sale or delivery of the Promissory Notes and the execution and delivery of this Loan Agreement and the other Loan Documents and the transactions contemplated thereby and will save the Bank harmless, without limitation as to time, against any and all liabilities with respect to all such Taxes. The Borrower will also pay all other Taxes that may be levied on the Promissory Notes or interest thereon, except any income tax imposed under the laws of the United States of America or other Governmental Authority, and will save the Bank harmless, without respect to all such Taxes. The obligations of the Borrower under this Section 8.11 shall survive the payment or prepayment of the Promissory Notes and the termination of this Loan Agreement.

Section 8.12. Notices. Promptly deliver to the Bank all reports, notices, documents and other information provided to it by any lessee under any Lease or by any permitted sublessee (as the case may be).

## ARTICLE IX

### NEGATIVE COVENANTS

The Borrower shall not, without the prior written consent of the Bank, directly or indirectly:

Section 9.1. Sale of Collateral. Except as otherwise provided in Section 2.5(b) hereof, sell, lease (other than to a



lessee under a Lease), sublease, or otherwise transfer or dispose of any of the Collateral. Any consent of the Bank to the disposition of the Collateral may be conditioned on a specified use of the proceeds of disposition.

Section 9.2. Lease Assignment. Assign any of its rights under any Lease to any Person other than the Bank or permit any lessee (other than as provided by the terms of the applicable Lease) or any permitted sublessee (as applicable) to assign its obligations to any other Person, it being understood that any lessee or any permitted sublessee (as applicable) may engage in inter-line sharing of Railcars to the extent customary in the railroad industry.

Section 9.3. Lease Amendment. Agree to amend, supplement or modify any provision of any Lease.

Section 9.4. Merger or Acquisition. Alter or amend its capital structure, dissolve, merge or consolidate with or into any other Person, or acquire any interest in, or a substantial portion of, the assets or obligations of any other Person.

Section 9.5. Line of Business. Enter into any lines or areas of business substantially different from the business activities in which it is presently engaged.

Section 9.6. ERISA Compliance. Permit any Commonly Controlled Entity, (a) with respect to any "pension plan" that the Borrower and/or any Commonly Controlled Entity maintains or contributes to, either now or in the future, (1) engage in or permit to occur any "prohibited transaction" (as defined in Section 406 or Section 203(a) of ERISA or Section 4975 of the code), (2) incur any "accumulated funding deficiency" whether or not waived, or (3) terminate any pension plan in a manner that could result in the imposition of a lien on the property of the Borrower pursuant to Section 4068 of ERISA; and (b) with respect to any "multi-employer plan" that the Borrower and/or any Commonly Controlled Entity maintains or contributes to, either now or in the future, (4) terminate or consent to the termination of any multi-employer plan, (5) incur a complete or partial withdrawal from any multi-employer plan within the meaning of Sections 4203 and 4205 of ERISA, or (6) fail to notify the Bank within fifteen (15) days after receiving notice that any multi-employer plan has been or will be placed in "reorganization."

## ARTICLE X

### FINANCIAL INFORMATION; NOTICES

Until such time as all of the Obligations have been paid in full, the Borrower shall furnish to the Bank, at the Borrower's sole cost and expense:

Section 10.1. Quarterly Financial Statements. Within sixty (60) days after the close of each quarterly accounting period in each fiscal year of the Borrower, the internally prepared balance sheets of the Borrower as at the end of such quarterly period and the related statements of income, retained earnings and changes in financial position of the Borrower for the elapsed portion of the fiscal year ended with the last day of such quarterly period and setting forth after the end of the first fiscal year of the Borrower, in each case in comparative form the figures for the corresponding quarter of the previous fiscal year, each of which shall be accompanied by a certificate of the president or chief financial officer of the Borrower in the form of Schedule 10.1, all in reasonable detail, prepared in accordance with GAAP, certified by the principal financial officer of the Borrower and satisfactory to the Bank.

Section 10.2. Year-End Financial Statements. Within one hundred twenty (120) days after the end of each fiscal year of the Borrower, the unqualified, balance sheets of the Borrower as at the end of such fiscal year and the related statements of income, retained earnings and changes in financial position of the Borrower for such fiscal year, and, on and after the end of the second fiscal year of the Borrower, setting forth, in comparative form the figures as at the end of and for the previous fiscal year, in each case in reasonable detail, internally prepared in accordance with GAAP.

Section 10.3. Additional Materials. From time to time and promptly upon request of the Bank, such data, certificates, reports, statements, documents or further information regarding this Loan Agreement, any of the other Loan Documents, any Lease, the Guaranty, any lessee under a Lease or any permitted sublessee, the Guarantors and/or the Railcars, in each case in form and substance and certified in a manner satisfactory to the Bank.

Section 10.4. Notice of Defaults. Notify the Bank promptly in writing of (a) any Default or Event of Default; and (b) any default under any Lease.

Section 10.5. Lease Notices. Provide the Bank promptly with copies of all notices received or sent by the Borrower or to it in connection with any Lease.

Section 10.6. Notice of Litigation. Give prompt notice to the Bank in writing, with a full description, of all litigation and of all proceedings before any court or any Governmental Authority that might affect the conduct of the business of the Borrower, the financial condition of the Borrower, the Collateral or the performance by the Borrower of its obligations under the Loan Documents.

Section 10.7. Duty of Borrower to Furnish Information. On or before March 31, 1995, and on or before each March 31 thereafter, the Borrower will furnish, or will cause any lessee or permitted sublessee (as the case may be) to furnish, to the Bank an accurate statement, as of the preceding December 31 (a) showing the location of each Railcar (to the extent such information is available from any lessee or any permitted sublessee); (b) whether such Railcar is under lease and sublease and if so, to whom; (c) the amount, description or numbers of all Railcars that may have suffered a Casualty Occurrence during the twelve (12) months ending on such December 31 or are then undergoing repairs (other than running repairs) or are then withdrawn from use pending such repairs; and such other information regarding the condition and state of repair of the Railcars as the Bank may reasonably request; and (d) stating that, in the case of all Railcars repainted or repaired during the period covered by such statement, the numbers and markings required by Section 5.3 shall have been preserved or replaced. The Bank shall have the right, by its respective agents, to inspect the Railcars and the Borrower's and, if applicable, any lessee's records with respect thereto, at such reasonable times as the Bank may request during the term hereof.

Section 10.8. Governmental Regulation Generally. The Borrower shall promptly notify the Bank in the event that the Borrower receives any notice, claim or demand from any Governmental Authority which alleges that the Borrower is in violation of any of the terms of, or has failed to comply with, any applicable order issued pursuant to any Applicable Law which might in any way affect the Borrower's title to, or use and operation of, the Collateral or any of the Bank's rights hereunder or under any of the other Loan Documents or which might otherwise affect in any material way the operation of the Borrower's business, including, but not limited to, the Occupational Safety and Health Act and the Environmental Protection Act.

## ARTICLE XI

### DEFAULT

Each of the following shall constitute an event of default (an "Event of Default") hereunder, whatever the reason for such event and whether it shall be voluntary or involuntary, or within or without the control of the Borrower or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any Governmental Authority or non-Governmental Authority:

Section 11.1. Failure to Pay. The Borrower shall fail to pay when due (whether at maturity, by acceleration or otherwise) any of the Obligations, including, but not limited to, the principal of or interest on, any Promissory Note.

Section 11.2. Breach of Representations and Warranties. Any representation or warranty made herein or in any report, certificate, opinion (including any opinion of counsel for the Borrower), financial statement or other instrument furnished in connection with the Obligations or with the execution and delivery of any of the Loan Documents, shall prove to have been false or misleading in any material respect when made or shall omit any fact necessary not to make any such report, certificate, opinion, financial statement or other instrument not materially misleading.

Section 11.3. Failure to Comply with Covenants. The Borrower shall fail to duly observe and perform:

(a) any term, covenant, condition or agreement contained in Sections 2.5(b), 2.8, 3.1(1), 4.3, 5.1 through 5.6 inclusive, 6.1, 6.3, 8.1, 8.2, 8.4, 8.5, 8.6, 8.9, 8.10(b), 8.11 and Article IX inclusive; and

(b) any term, covenant, condition or agreement contained in this Loan Agreement or in any of the other Loan Documents (other than a term, covenant, condition or agreement a default in the performance or observance of which is elsewhere in this Article specifically dealt with) and in the case of any such default that is curable by the Borrower, such default shall continue unremedied for a period of thirty (30) days.

Section 11.4. Bankruptcy.

(a) The Borrower shall (1) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (2) file a petition seeking to take advantage of any other laws, reorganization, winding up or composition or adjustment of debts, (3) consent to or fail to contest in a

timely and appropriate manner any petition filed against it in any involuntary case under such bankruptcy laws or other laws, (4) apply for, or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its assets, domestic or foreign, (5) admit in writing its inability to pay, or not be paying, its debts (other than those that are the subject of a bona fide dispute) as they become due, (6) make a general assignment for the benefit of creditors, or (7) take any corporate action for the purpose of effecting any of the foregoing; or

(b) A case or other proceeding shall be commenced against the Borrower in any court of competent jurisdiction seeking (1) relief under the federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, or (2) the appointment of a trustee, receiver, custodian, liquidator or the like of the Borrower or of all or any substantial part of the assets, domestic or foreign, of the Borrower, or (3) an order granting the relief requested in such case or proceeding against the Borrower (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered.

Section 11.5. Default Under Other Loan Documents. A default or an Event of Default (as defined therein) shall occur under any of the other Loan Documents and all grace periods with respect thereto shall have expired.

Section 11.6. Judgment; Attachment. A judgment is entered or an attachment is levied against the Collateral and remains either unsatisfied or not fully bonded for a period of fifteen (15) days thereafter.

Section 11.7. Mechanics Liens. A lien for the performance of work or the supply of materials is filed against any of the Collateral and remains either unsatisfied or not fully bonded for a period of fifteen (15) days after the creation thereof.

Section 11.8. Prospects for Payment Impaired. The Bank shall determine in good faith that its prospects for payment of any Promissory Note or any of the other Obligations are impaired for any reason.

Section 11.9. Default Under any Lease. Any Event of Default (as defined therein) shall have occurred under any Lease and be continuing beyond any applicable cure period, or the Borrower shall have breached any of its representations, warranties or covenants thereunder.

Section 11.10. Default Under the Parsons Guaranty. A Default (as defined therein) shall have occurred under the Parsons Guaranty.

Section 11.11. Bankruptcy of a Lessee, etc.

(a) Any lessee or any permitted sublessee (as the case may be) of any of the Railcars shall (1) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (2) file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, (3) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws, (4) apply for, or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its assets, domestic or foreign, (5) admit in writing its inability to pay, or not be paying, its debts (other than those that are the subject of a bona fide dispute) as they become due, (6) make a general assignment for the benefit of creditors, or (7) take any corporate action for the purpose of effecting any of the foregoing; or

(b) A case or other proceeding shall be commenced against any lessee or any permitted sublessee (as the case may be) of any of the Railcars in any court of competent jurisdiction seeking (1) relief under the federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, or (2) the appointment of a trustee, receiver, custodian, liquidator or the like of any lessee or any permitted sublessee (as the case may be) of any of the Railcars or of all or any substantial part of the assets, domestic or foreign, of any lessee or any permitted sublessee (as the case may be) of any of the Railcars, or (3) an order granting the relief requested in such case or proceeding against any lessee of any of the Railcars (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered; provided, that no Event of Default shall occur upon the occurrence of any of the events described in paragraphs (a) or (b) above if, within thirty (30) days of the date of the occurrence of such event, the Borrower has (i) with the approval of any court having jurisdiction over such lessee or such permitted sublessee (as the case may be) recovered possession of the Railcars, terminated the applicable Lease and entered into a new lease with a new lessee, which lease terms and lessee are acceptable to the Bank in its sole and absolute discretion, and (ii) effectively assigned to the Bank such new lease and

otherwise caused it to constitute a part of the Collateral pursuant to Section 4.1 of this Loan Agreement and taken all such actions requested by the Bank in furtherance thereof.

Section 11.12. Bankruptcy of the Guarantors.

(a) Either or both of the Guarantors shall (1) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (2) file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, (3) consent to or fail to contest in a timely and appropriate manner any petition filed against either or both of them in an involuntary case under such bankruptcy laws or other laws, (4) apply for, or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of a substantial part of either or both of their respective assets, domestic or foreign, (5) admit in writing their inability to pay, or not be paying, its debts (other than those that are the subject of a bona fide dispute) as they become due, (6) make a general assignment for the benefit of creditors, or (7) take any corporate action for the purpose of effecting any of the foregoing; or

(b) A case or other proceeding shall be commenced against either or both of them in any court or competent jurisdiction seeking (1) relief under the federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, or (2) the appointment of a trustee, receiver, custodian, liquidator or the like of any substantial part of their respective assets, domestic or foreign, or (3) an order granting the relief requested in such case or proceeding against either or both of them (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered.

ARTICLE XII

REMEDIES

Section 12.1. Acceleration. Upon the occurrence of an Event of Default (whether or not declared to be such by the Bank), and in every such event and at any time thereafter, the Bank may, subject to the provisions of Section 12.9 hereof, declare the Obligations to be immediately due and payable, both as to principal and interest, without presentment, demand, protest, or any notice of any kind, all of which are hereby

expressly waived by the Borrower, anything contained herein or in any of the other Loan Documents to the contrary notwithstanding.

Section 12.2. Additional Rights and Remedies. Upon the occurrence of an event of Default (whether or not declared to be such by the Bank), and in every such event and at any time thereafter, the Bank shall have all of the rights and remedies of a secured party under 49 U.S.C. § 11303 and, to the extent applicable, the UCC as in effect from time to time and may at the Borrower's sole cost and expense, in addition to all other rights and remedies provided hereunder or under the other Loan Documents or as shall exist at law or in equity from time to time, without notice to the Borrower:

(a) institute legal proceedings to recover judgment for all amounts then due and owing hereunder or under the Promissory Notes, and to collect the same; and/or

(b) institute legal proceedings for the foreclosure and sale, under the judgment or decree of any court of competent jurisdiction, of the Collateral; and/or

(c) institute legal proceedings for the appointment of a receiver or receivers pending foreclosure and sale of the Collateral under the order of a court of competent jurisdiction or under other legal process; and/or

(d) personally, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof, may then be located, and take possession of all or any part thereof with or without process of law and without being responsible for loss or damage, or render it unusable, and, without being responsible for loss or damage, hold, store and keep idle, or operate, lease or otherwise use or permit the use of the same or any part thereof for such time and upon such terms as the Bank may determine, in a commercially reasonable manner; and/or

(e) personally, or by agents or attorneys, sell or dispose of all or any part of the same, free from any and all claims of the Borrower or of any other party claiming by, through or under the Borrower at law, in equity or otherwise, at one or more public or private sales, in such place or places, at such time or times and upon such terms as the Bank may determine, in a commercially reasonable manner with or without any previous demand on or notice to the Borrower or advertisement of any such sale or other disposal, except that the Bank shall provide the Borrower with the notice required by Section 12.4; and for the aforesaid purposes, all other notices of sale, advertisement and demand and any right or equity of redemption otherwise required by, or available to the Borrower under, Applicable Law are hereby



waived by the Borrower to the fullest extent permitted by Applicable Law; the power of sale hereunder shall not be exhausted by one or more sales, and the Bank may from time to time adjourn any sale to be made hereunder; and/or

(f) demand, collect, and retain all rents, earnings and all other sums due and to become due from any party whomsoever, accounting only for net earnings arising after charging against all receipts from the use and hire of or sale of the Collateral, all costs and expenses of, and damages or losses by reason of, such use and hire or sale; and/or

(g) if and to the extent the Event of Default results from a breach by the Borrower of any representation, warranty or covenant of the Borrower contained herein, institute legal proceedings against the Borrower to enforce performance of the applicable covenant of the Borrower or to recover damages for the breach of any such representation, warranty or covenant; and/or

(h) remove from the Borrower's places of business all books, records, ledger sheets, correspondence, invoices and documents, relating to or evidencing any of the Collateral; and/or

(i) make such use of the Borrower's places of business as may be reasonably necessary to administer, control and collect the Collateral; and/or

(j) require the Borrower to assemble the Collateral and make it available to the Bank, at a place designated by the Bank; and/or

(k) offset and apply to all or any part of the Obligations all monies, securities and other funds on deposit in the Collateral Account or constituting proceeds of the Collateral, both now or at any time hereafter in the procession of, in transit to or from, under the control or custody of, the Bank.

Section 12.3. Power of Attorney. The Borrower hereby appoints the Bank as its attorney-in-fact to accomplish any of the rights and remedies set forth in Section 12.2, in the name of the Borrower, the Bank, or the Bank's designees as the Bank may from time to time elect, said appointment being coupled with an interest and being irrevocable. The Borrower hereby ratifies and approves all acts of the Bank as its attorney-in-fact and will not hold the Bank liable for any acts of commission or omission (other than for the Bank's own gross negligence or willful misconduct) nor for any error of judgment or mistake of fact or law.

Section 12.4. Sale Notice, Expenses and Proceeds. Any written notice of the sale, disposition or other intended action by the Bank with respect to the Collateral that is sent by regular mail, postage prepaid, to the Borrower at the address set forth in Article XIV, or such other address of the Borrower that may from time to time be shown on the Bank's records, at least five (5) days' prior to such sale, disposition or other action, shall constitute reasonable notice to the Borrower. The Borrower shall pay on demand all costs and expenses, including, without limitation, attorneys' fees and expenses, incurred by or on behalf of the Bank in preparing for sale or other disposition, selling, managing, collecting or otherwise disposing of, the Collateral. All of such costs and expenses (the "Liquidation Costs") together with interest thereon from the date incurred until paid in full at the Default Rate, shall be paid by the Borrower to the Bank on demand and shall constitute and become a part of the Obligations. Any proceeds of sale or other disposition of the Collateral will be applied by the Bank to the payment of the Liquidation Costs, and any balance of such proceeds will be applied by the Bank to the payment of the balance of the Obligations in such order and manner of application as the Bank may from time to time in its sole discretion determine. After such application of the proceeds, any surplus shall be paid to the Borrower or to any other party entitled thereto, and the Borrower shall be and remain liable to the Bank in the event any deficiency remains.

Section 12.5. Right to Purchase Collateral. At any sale pursuant to this Article, the Bank or its agent may, to the extent permitted by Applicable Law, bid for and, if the Bank is the highest bidder, purchase the Collateral offered for sale, may credit the unpaid balance of the Obligations against the purchase price and, upon compliance in full with the terms of such sale, may hold, retain and dispose of such property without further accountability therefor to the Borrower or any other party.

Section 12.6. Waiver by Borrower. To the fullest extent that it may lawfully so agree, the Borrower shall not at any time insist upon, claim, plead, or take any benefit or advantage of, any appraisal, valuation, stay, extension, moratorium, redemption or any similar law now or hereafter in force in order to prevent, delay or hinder the enforcement of this Loan Agreement or the absolute sale of any part or all of the Collateral or the possession thereof by any purchaser at any sale pursuant to this Article. The Borrower, for itself and all who may claim by, through or under it, as far as it or they now or hereafter lawfully may so do, hereby waives the benefit of all such laws and all right to have the Collateral marshalled upon any foreclosure hereof, and agrees that any court having jurisdiction to foreclose under this Loan Agreement may order the sale of the Collateral as any entirety or in lots.

Section 12.7. Disclosures. The Bank may disclose to, and exchange and discuss with, any other Person (the Bank and each such other Person being hereby irrevocably authorized to do so) any information concerning the Borrower (whether received by the Bank or such Person in connection with or pursuant to this Loan Agreement or otherwise) for the purpose of protecting, preserving, exercising or enforcing any rights hereunder or under any of the other Loan Documents, or consulting with respect to any such rights or any rights of the Borrower, and the Bank may disclose to any Person any such information as may be required by Applicable Law or in accordance with the Bank's normal procedures.

Section 12.8. Cumulative Rights. Each right, power and remedy herein specifically granted to the Bank or otherwise available to it shall be cumulative, and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or otherwise. Each right, power and remedy, whether specifically granted herein or otherwise existing, may be exercised, at any time and from time to time, as often and in such order as may be deemed expedient by the Bank in its sole and complete discretion. The exercise or commencement of exercise of any right, power or remedy shall not be construed as a waiver of the right to exercise, at the same time or thereafter, the same or any other right, power or remedy. No delay or omission by the Bank in exercising any such right or power, or in pursuing any such remedy, shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Borrower or an acquiescence therein. No waiver by the Bank of any breach or default of or by the Borrower under this Loan Agreement shall be deemed to be a waiver of any other or similar, previous or subsequent breach or default.

Section 12.9. Certain Rights of Borrower. Notwithstanding anything contained in this Loan Agreement to the contrary:

(a) Right to Cure Lessee Defaults under a Lease. In the event any lessee fails to pay when due any installment of rent, casualty payment, or other sum due under its Lease, the Bank (to the extent of its actual knowledge thereof) shall give the Borrower notice thereof, and on or before the 10th day next following the giving of such notice, the Borrower may pay to the Bank a sum equal to the amount of all (but not less than all) principal and interest then due hereunder and/or under the Promissory Notes that otherwise would have been paid out of the payment to be received by the Bank had such payment been made, together with interest, if any, due on account of such payment being overdue at the Default Rate as provided in Section 2.7 hereof. In the event of any other default by such lessee in the performance of any other obligation owed by it under its Lease,

the Borrower may in accordance with the terms hereof perform such obligation on behalf of such lessee. Solely for the purpose of determining whether there exists an Event of Default hereunder (i) any payment by the Borrower pursuant to, and in compliance with, the first sentence of this Section 12.9(a) shall be deemed to remedy any default by a lessee in the payment of any installment of rent, casualty payment or other sum theretofore due and payable and to remedy any default by the Borrower in the payment of any amount due and payable hereunder and/or under the Promissory Notes and resulting from such failure to pay rent, casualty payment, or other sums then due by such lessee under the Lease, and (ii) any performance by the Borrower of any obligation of such lessee under its Lease pursuant to, and in compliance with, the second sentence of this Section 12.9(a) shall be deemed to remedy any default by such lessee in the performance of such obligation and to remedy any default hereunder arising out of such default by such lessee and the Bank shall not exercise any of its rights hereunder or declare the Obligations to be immediately due and payable as provided in Section 12.01. This Section 12.9(a) shall apply to each Event of Default (as defined therein) under the any Lease, except that:

(A) this Section 12.9(a) shall not apply to any default by a lessee in the payment of any installment of rent due under its Lease, if default by such lessee in the payment of two consecutive installments of rent, or in the payment of a total of four installments of rent, shall have been cured by the Borrower pursuant to the foregoing provisions of this Section 12.9(a); and

(B) this Section 12.9(a) shall not apply to any other payment defaults by such lessee if such payment defaults by such lessee in amounts greater than \$20,000 shall have been cured by the Borrower pursuant to the foregoing provisions of this Section 12.9(a) within any 12 month period.

Upon the exercise of any cure rights under this Section 12.9(a), the Borrower shall have no lien on any part of the Collateral on account of any payment made or the costs and expenses incurred in connection therewith nor, except as expressly provided in Section 12.9(b) hereof, shall any claim the Borrower may have against a lessee for repayment thereof impair the prior right and security interest of the Bank in and to the Collateral.

(b) Distribution After Borrower Exercises Cure Rights.

Upon the exercise of any cure right under the first sentence of Section 12.9(a), the Borrower shall be subrogated to the rights of the Bank to receive any payment with respect to which the Borrower effected such cure (including interest on account of such payment being overdue) in the manner set forth in the next

sentence. If the Bank shall thereafter receive payment of any sum which a lessee was obligated but failed to pay and which the Borrower did in fact pay to the Bank, the Bank shall promptly remit such payment (to the extent of the payment actually made by the Borrower pursuant to Section 12.9(a) hereof) to the Borrower in reimbursement for the monies advanced by it; provided, however, that if and for so long as any Event of Default hereunder shall have occurred and be continuing, such payment shall not be remitted to the Borrower but shall be held by the Bank as additional security for the Borrower's Obligations hereunder and, if appropriate, be applied in accordance with the terms of this Loan Agreement.

(c) Shared Rights. The Borrower will at all times retain but not to the exclusion of the Bank, the rights (i) to receive from any lessee all notices, copies of documents and other information which such lessee is permitted or required to give to the Borrower pursuant to the terms of its Lease, (ii) to inspect the Railcars and the books and records of such lessee to the extent permitted in such Lease, (iii) to provide such insurance as such lessee shall have failed to maintain pursuant to the terms of its Lease, and (iv) to perform for such lessee its obligations under its Lease.

(d) Terminations, Amendments, Waivers, etc. (i) Unless an Event of Default (as defined therein) has occurred under any Lease or other Event of Default has occurred hereunder, neither the Bank nor the Borrower shall enter into any amendments to any Lease without the prior written consent of the other.

(i) Upon the occurrence of a default by a lessee under any Lease giving rise to an Event of Default as specified in Section 11.9 (other than as a result of the filing by or against any such lessee of a petition in bankruptcy or other event specified in Sections 11.11) hereof and provided no other Event of Default has then occurred, the Borrower shall have the exclusive right to terminate such Lease pursuant to the terms thereof; provided that within thirty (30) days after the occurrence of such Event of Default, the Borrower either (x) pays to the Bank in full all sums payable hereunder and under the Promissory Notes (whether or not then due and payable), together with any fees and expenses (including legal fees and expenses) incurred by the Bank as a result of such Event of Default, or (y) enters into a new Lease on terms and with a new lessee acceptable to the Bank in its sole discretion; and provided, further, that said lessee, or any guarantor guarantying said lessee's obligations under such new Lease possesses a net worth at least equal to that of such lessee as of the date hereof and the Borrower delivers to the Bank the original chattel paper copy of said new Lease, a copy of which shall have been duly filed with

the ICC and recorded in each other jurisdiction where required and of the guaranty (if applicable).

(ii) If an Event of Default (as defined therein) has occurred under any Lease and the Borrower has not elected to exercise its rights pursuant to Section 12.9(d)(i) hereof within the time period stated therein, the Bank may exercise any and all rights provided in this Article XII (without further notice to or consent of the Borrower).

### ARTICLE XIII

#### RETURN OF RAILCARS UPON DEFAULT

Section 13.1. Borrower's Duty to Return. If, following the occurrence of an Event of Default, the Bank requests the Borrower to assemble and return all Railcars to it, the Borrower shall forthwith deliver, or cause any lessee or any permitted sublessee (as the case may be) to deliver, possession of the Railcars to the Bank. For the purpose of delivering possession of the Railcars to the Bank as above required, the Borrower shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Railcar or Railcars have been interchanged to return the Railcar or Railcars so interchanged) place such Railcars upon such storage tracks in the continental United States of America as the Bank reasonably may designate, or, in the absence of such designation, as the Borrower may select;

(b) permit the Bank to store such Railcars on such tracks at the risk of the Borrower until such Units have been sold, leased or otherwise disposed of by the Bank (but in no event shall the Borrower have any obligation to store the Railcars on tracks owned by it (as opposed to tracks owned by others over which it has trackage or other operating rights) for longer than 180 days) and during such period of storage, the Borrower shall continue to maintain all insurance required by Section 6.1 and shall otherwise satisfy its obligations under Article IV hereof; provided, further, that the Borrower shall be and continue to remain liable for the costs of storing and insuring the Railcars, notwithstanding the removal thereof from the Borrower's storage tracks at the end of said 180-day period, until such Railcars are disposed of by the Bank; and

(c) cause any or all of the Railcars to be moved to such interchange point or points in the continental United States of America as shall be designated by the Bank upon any sale, lease or other disposal of such Railcars.

Section 13.2. Specific Performance. The assembling, delivery, storage and transporting of the Railcars as hereinbefore provided shall be at the expense and risk of the Borrower and are of the essence of this Loan Agreement, and upon application to any court of equity having jurisdiction in the premises the Bank shall be entitled to a decree against the Borrower requiring specific performance of the covenants of the Borrower so to assemble, deliver, store and transport the Railcars. During any storage period, the Borrower will permit the Bank or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Railcar, to inspect the same; provided, however, that the Borrower shall not be liable, except in the case of negligence of the Borrower or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Bank or any prospective purchaser, the rights of inspection granted under this sentence.

Section 13.3. Bank Appointed Borrower's Agent. Without in any way limiting the obligation of the Borrower under the foregoing provisions of this Article, the Borrower hereby irrevocably appoints the Bank as the agent and attorney of the Borrower, with full power and authority (which power is coupled with an interest), at any time while the Borrower is obligated to deliver possession of any Railcar to the Bank, to demand and take possession of such Railcar in the name and on behalf of the Borrower from whosoever shall be at the time in possession of such Railcar.

#### ARTICLE XIV

#### MISCELLANEOUS

Section 14.1. Indemnity for Misrepresentations or Breaches of Covenants. The Borrower hereby further covenants and agrees with the Bank that in any suit, proceeding or action brought or taken by the Bank under this Loan Agreement or any bill of sale relating to the Equipment Collateral, the Borrower will save, indemnify and keep the Bank harmless from and against all losses, damages, liabilities and expenses (including legal fees and expenses) suffered by the Bank as a result of any misrepresentation or any breach by the Borrower of any of its obligations hereunder.

Section 14.2. Regulatory Changes.

(a) If any Regulatory Change:

(1) shall subject the Bank to any Tax (other than a Tax on the overall net income or profits of the Bank), duty or other charge determined by the Bank to be applicable to any Loan, to its obligation to make or maintain any Loan, or to this Loan Agreement or any of the other Loan Documents, or shall, in the determination of the Bank, change the basis of taxation of payments to the Bank of the principal of, premium, if any, or interest on the Loans or its obligation to maintain such Loans; or

(2) shall impose, increase, modify or deem applicable any reserve, special deposit, assessment, capital adequacy requirement or other requirement against assets of, deposits with or to the account of, credit extended by the Bank, or the Commitment, or shall impose on the Bank or on an relevant interbank market for United States Dollars, or the market for certificates of deposit, any condition; and the result of the foregoing, in the determination of the Bank, is (x) to reduce the amount of any sum received or receivable by such Bank with respect to any amounts loaned hereunder or return to be earned by the Bank on any amounts loaned hereunder, (y) to impose a cost on the Bank that is attributable to the maintaining of the Loans or (z) to require the Bank to make any payment on or calculated by reference to the gross amount of any amount received by it hereunder or under a Promissory Note, then, within fifteen (15) days after request by the Bank, the Borrower shall pay to the Bank such additional amount or amounts as the Bank determines will compensate the Bank for such reduction, increased cost or payment. The Bank will promptly notify the Borrower of any Regulatory Change of which it has knowledge that will entitle the Bank to compensation pursuant to this Section 14.2, but the failure to give such notice shall not affect the Bank's right to such compensation.

(b) In making the determinations contemplated by this Section 14.2, the Bank may make such reasonable estimates, assumptions, allocations and the like that the Bank in good faith determines to be appropriate, but the Bank's selection thereof in accordance with this Section and the determinations made by the Bank on the basis thereof, shall be final, binding and conclusive upon the Borrower, except, in the case of such determinations, for manifest errors in computation or transmission. The Bank shall furnish to the Borrower upon request a certificate outlining in reasonable detail the computation of any amounts claimed by the Bank under this Section and the assumptions underlying such computations.

Section 14.3. Liability of the Bank. The Borrower hereby agrees that the Bank shall not be chargeable for any negligence,



mistake, act or omission of any accountant, examiner, agency or attorney contracted for by the Bank in making examinations or investigations, or otherwise in perfecting, maintaining, protecting or realizing upon any security for the Obligations; provided, however, the Bank shall be liable for such negligence, mistake, act or omission if the Bank was grossly negligent in engaging such accountant, examiner, agency or attorney on its behalf and relating to the Borrower.

Section 14.4. Notices. All notices and other communications under this Loan Agreement and the other Loan Documents, including but not limited to, materials delivered pursuant to Article X, shall (a) be in writing (which shall include communications by facsimile), (b) be (i) sent by certified mail, postage prepaid, return-receipt requested, (ii) sent by prepaid facsimile, or (iii) delivered by hand, and (c) be given at the following respective addresses and/or facsimile numbers:

(i) if to the Borrower, at:

Southern Illinois Railcar Company  
One Mark Twain Bank Plaza  
Suite 225  
Edwardsville, Illinois 62025  
Facsimile No.: (618) 667-2739  
Attention: President

with a copy to:

David L. Fleisher, Esq.  
Peper, Martin, Jensen, Maichel & Hetlage  
720 Olive  
St. Louis, Missouri 63101  
Facsimile No.: (314) 621-4834

(ii) if to the Bank, at:

Mark Twain Illinois Bank  
One Mark Twain Bank Plaza  
Edwardsville, Illinois 62025  
Facsimile No.: (618) 656-8045  
Attention: Dennis M. Terry, President

with a copy to:

Husch & Eppenberger  
100 North Broadway, Suite 1300  
St. Louis, Missouri 63102  
Facsimile No.: (314) 421-0239  
Attention: Edward J. Lieberman, Esq.

or at such other address, or facsimile number as the Bank or the Borrower may hereafter specify for the purpose in a notice to the other specifically captioned "Notice of Change of Address". Such notices and communications shall be effective or deemed delivered or furnished (i) if given by mail, on the third (3rd) Business Day after such communication is deposited in the U.S. mail, addressed as above provided, (ii) if given by facsimile, when such communication is transmitted to the appropriate number and the appropriate answer-back is received or receipt is otherwise acknowledged, and (iii) if give by hand delivery, when left at the address of the addressee addressed as above provided.

Section 14.5. Expenses. The Borrower will, on demand:

(a) pay or reimburse the Bank for all reasonable out-of-pocket costs and expenses, including legal fees and disbursements and fees and disbursements of other experts, incurred by the Bank in connection with (i) the preparation, execution and delivery of this Loan Agreement, the other Loan Documents, and any amendment, modification or waiver hereof or thereof hereunder, (ii) the protection, preservation, exercise or enforcement of any of its rights hereunder, under the other Loan Documents, or any other document issued pursuant thereto or in connection therewith, and (iii) the defense of any claim referred to in clause (b)(i) below; and

(b) pay, and indemnify and hold the Bank harmless from and against (i) any losses in connection with any claim in any way arising out of, related to or connected with, this Loan Agreement, the Promissory Notes, the other Loan Documents, any Lease or the Guaranty, including, without limitation, any losses suffered by reason of any defense, setoff, counterclaim or recoupment by any lessee or its successors under any Lease (except, in the case of any claim brought by the Borrower or a lessee, to the extent such claim results in a final judgment in favor of the Borrower or such lessee that the Bank had acted in bad faith) and (ii) all transfer, documentary stamp and similar taxes, and recording and filing fees, payable in respect to this Loan Agreement and the other Loan Documents. The Borrower's obligations under this Section shall survive the repayment in full of the Obligations.

Section 14.6. Waivers; Amendments. Any term, covenant, agreement or condition of this Loan Agreement or any of the other Loan Documents may be amended or waived, and any departure therefrom may be consented to, if, but only if, such amendment, wavier or consent is in writing and is signed by the Bank and, in the case of each amendment, is signed by the Borrower. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

Section 14.7. Binding Agreement; Assignment. All the provisions of this Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successor and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Loan Agreement, and no such assignment or transfer of any such obligation shall relieve the Borrower thereof unless the Bank shall have consented to such release in a writing specifically referring to the obligation from which the Borrower is to be released.

Section 14.8. Severability of Provisions. Any provision of this Loan Agreement or any of the other Loan Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Borrower hereby waives any provision of law which renders any provision hereof or thereof prohibited or unenforceable in any respect.

Section 14.9. Number; Gender. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, and the use of the masculine, feminine or neuter gender shall include all genders.

Section 14.10. Headings. The headings in this Loan Agreement are for convenience only and shall not limit or otherwise affect any of the terms hereof.

Section 14.11. Counterparts. This Loan Agreement and each of the other Loan Documents may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and shall be binding upon all parties, their successors and assigns.

Section 14.12. Survival of Agreement. All covenants, agreements, representations and warranties made by the Borrower herein and in the Loan Documents and in any other certificates, instruments or documents delivered pursuant hereto shall survive the making by the Bank of the Loans and the execution and delivery of the Promissory Notes, and shall continue in full force and effect so long as any of the Obligations are outstanding and unpaid.

Section 14.13. Entire Agreement. This Loan Agreement and the other Loan Documents embody the entire agreement between the parties hereto and supersede all prior agreements, representations and understandings, if any, relating to the subject matter hereof.

Section 14.14. Governing Law. This Loan Agreement and the other Loan Documents shall be construed in accordance with and governed by the internal laws (as opposed to conflicts of law provisions) and decisions of the State of Illinois.

Section 14.15. Special Provision. Notwithstanding anything contained herein to the contrary, the Collateral shall not include Borrower's interest in any Leases pertaining to the fifteen (15) Railcars purchased from R. F. Cunningham Co., Inc. (car numbers CUNX 1116-1130) (the "Cunningham Cars"), described in the Borrowing Schedule executed by the parties hereto and dated of even date herewith (the "October 31, 1994 Borrowing Schedule"). To such extent, the following provisions contained herein shall not apply to the borrowing made pursuant to the October 31, 1994 Borrowing Schedule: (a) the provisions pertaining to the assignment of the rental streams and other payments under leases of the Cunningham Cars, such as those contained in Sections 2.6(a)(ii), 2.8 and 4.1, among other sections hereof, (b) the provisions of Sections 11.9 and 11.11 (except, Section 11.11 shall continue to apply if its failure to apply would impair Bank's right and/or ability to obtain possession of any Collateral upon the occurrence of an Event of Default hereunder, unless Borrower offers and Bank accepts alternative collateral to serve as a substitute for the Collateral so impaired), and (c) the provisions of Section 12.9, provided, however, the foregoing statements shall in no way affect Bank's right to collect any insurance proceeds payable by reason of any loss or damage to the Cunningham Cars. In addition, notwithstanding the provisions of Section 9.1, Borrower may lease and/or sublease the Cunningham Cars without the consent of Bank.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their duly authorized officers, under seal, as of the day and year first written above.

WITNESS:

SOUTHERN ILLINOIS RAILCAR COMPANY

*Fred L. Parsons*

By: *Fred L. Parsons* (SEAL)  
Fred L. Parsons  
President

WITNESS:

MARK TWAIN ILLINOIS BANK


*Dennis M. Terry*

By: *Dennis M. Terry* (SEAL)  
Dennis M. Terry  
Vice President

STATE OF MISSOURI                    )  
  ) SS:  
CITY OF ST. LOUIS                    )

On this 31st day of October, 1994, before me, a Notary Public of the City and State aforesaid, personally appeared Fred L. Parsons, to me personally known, who being by me duly sworn, says that he is the President of Southern Illinois Railcar Company, an Illinois corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

AS WITNESS my hand and notarial seal

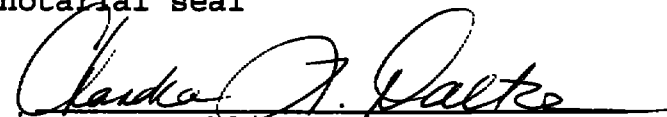
  
CHANDRAL L. DALTON  
NOTARY PUBLIC—STATE OF MISSOURI  
ST. LOUIS COUNTY

My commission expires: MY COMMISSION EXPIRES SEPT. 30, 1998

STATE OF MISSOURI                    )  
  ) SS:  
CITY OF ST. LOUIS                    )

On this 31st day of October, 1994, before me, a Notary Public of the City and State aforesaid, personally appeared Dennis M. Terry, to me personally known, who being by me duly sworn, says that he is President of Mark Twain Illinois Bank, an Illinois banking corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

AS WITNESS my hand and notarial seal

  
Notary Public  
CHANDRAL L. DALTON  
NOTARY PUBLIC—STATE OF MISSOURI  
ST. LOUIS COUNTY

My commission expires: MY COMMISSION EXPIRES SEPT. 30, 1998

Schedule 1

BORROWING SCHEDULE

This is a Borrowing Schedule referred to and defined in that certain Loan Agreement, Chattel Mortgage and Security Agreement dated as of October 31, 1994 by and between Southern Illinois Railcar Company and Mark Twain Illinois Bank.

1. Railcars to be Acquired.

See Schedule 1-A attached hereto

2. Maximum Advance Per Railcar. \$

3. Lease.

4. Railcar Release Price. \$

IN WITNESS WHEREOF, the undersigned have entered into this Borrowing Schedule as of the \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

WITNESS:

SOUTHERN ILLINOIS RAILCAR COMPANY

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Fred L. Parsons  
President

WITNESS:

MARK TWAIN ILLINOIS BANK

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

STATE OF MISSOURI                    )  
  ) SS:  
CITY OF ST. LOUIS                    )

On this \_\_\_\_ day of \_\_\_\_\_, 199\_, before me, a Notary Public of the City and State aforesaid, personally appeared Fred L. Parsons, to me personally known, who being by me duly sworn, says that he is the President of Southern Illinois Railcar Company, an Illinois corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

AS WITNESS my hand and notarial seal

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF MISSOURI                    )  
  ) SS:  
CITY OF ST. LOUIS                    )

On this \_\_\_\_ day of \_\_\_\_\_, 199\_, before me, a Notary Public of the City and State aforesaid, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of Mark Twain Illinois Bank, an Illinois banking corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

AS WITNESS my hand and notarial seal

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



SCHEDULE 1-A TO BORROWING SCHEDULE

SOUTHERN ILLINOIS RAILCAR COMPANY  
LISTING OF CARS PURCHASED  
YEAR BUILT & CUBIC CAPACITY

<u>CAR NUMBER</u>	<u>YEAR BUILT</u>	<u>CU. CAP.</u>
-------------------	-------------------	-----------------

Schedule 3.1(a)(i)

Certificate as to Corporate Information

See following pages.

# **SOUTHERN ILLINOIS RAILCAR COMPANY**

**Actions by the Board of Directors  
by Unanimous Written Consent**

**October 31, 1994**

**The undersigned, being all the directors of SOUTHERN ILLINOIS RAILCAR COMPANY, an Illinois corporation (the "Corporation"), pursuant to the authority of The Business Corporation Act of 1983, hereby consent and subscribe in writing, without a meeting, to the following actions:**

**WHEREAS, the Corporation has entered into that certain Purchase and Sale Agreement (the "Purchase Agreement") dated as of October 4, 1994 with R. F. Cunningham & Company, Inc., a New York corporation ("Seller") pursuant to which the Corporation agreed to purchase from Seller fifteen (15) 100-ton covered hopper cars (the "Cars"), as such Cars are more particularly described in the Purchase Agreement; and**

**WHEREAS, in connection with the purchase of the Cars and certain other railcars to be purchased by the Corporation, the Corporation desires to borrow up to \$1,704,800 from Mark Twain Illinois Bank (the "Bank") pursuant to the terms and conditions of a Loan Agreement, Chattel Mortgage and Security Agreement between the Corporation and the Bank dated as of October 31, 1994, as amended and supplemented by various Borrowing Schedules, including a Borrowing Schedule dated as of October 31, 1994 (collectively, the "Loan Agreement"); and**

**WHEREAS, it would be in the best interest of the Corporation to close the purchase of the Cars pursuant to the Purchase Agreement and to obtain such loan from the Bank pursuant to the Loan Agreement.**

**NOW, THEREFORE, BE IT RESOLVED:**

**1. That the execution and delivery of the Purchase Agreement by the officers of the Corporation is hereby ratified and approved and any officer of the Corporation be, and each of them acting alone, is authorized and directed to execute and deliver in the name and on behalf of the Corporation any amendment, change, addition or modification to the Purchase Agreement as the officer executing and delivering the same may approve, such execution and delivery to be conclusive evidence of such approval, and to take all further actions as they, or any one of them, shall deem necessary, proper or advisable**

# **SOUTHERN ILLINOIS RAILCAR COMPANY**

## **Secretary's Certificate**

The undersigned, Eugenia M. Parsons, the duly appointed Secretary of Southern Illinois Railcar Company, an Illinois corporation (the "Corporation"), does hereby certify, that:

1. The persons named below have been duly elected (or appointed) and have duly qualified as, and on this day are, officers of the Corporation holding the offices set forth opposite their respective names, and the signatures below set opposite their respective names are their genuine signatures:

<u>Name</u>	<u>Office</u>	<u>Signature</u>
Fred L. Parsons	President	_____
Eugenia M. Parsons	Secretary	_____

2. The resolutions attached to this Certificate as Attachment A are true, accurate, correct and complete copies of certain resolutions of the Board of Directors of Corporation adopted by Corporation's Board of Directors and dated as of the 31st day of October, 1994, and such resolutions have not been amended or rescinded and are in full force and effect on and as of the date hereof.

3. The Loan Agreement, Chattel Mortgage and Security Agreement by and between the Corporation and Mark Twain Illinois Bank, an Illinois banking corporation, dated as of October 31, 1994 (the "Loan Agreement") and each of the other Loan Documents (as defined in the Loan Agreement), in each case, where applicable, as executed and delivered on behalf of the Corporation, are in the forms thereof approved by the Board of Directors of the Corporation.

4. The copies of the Articles of Incorporation of Corporation (the "Articles of Incorporation") and the Bylaws of the Corporation (the "Bylaws") attached hereto as Attachments B and C, respectively, are true, accurate, correct and complete copies of (i) the Articles of Incorporation as filed with the Secretary of State of the State of Illinois and (ii) the Bylaws as duly adopted by the Board of Directors of Corporation, and both the Articles of Incorporation and the Bylaws are in full force and effect on and as of the date hereof.

**IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the 31st day of October, 1994.**

---

**Eugenia M. Parsons, Secretary  
Southern Illinois Railcar Company**

**I, Fred L. Parsons, President of the Corporation, do hereby certify that Eugenia M. Parsons has been duly elected or appointed and has duly qualified as, and on this day is, Secretary of the Corporation, and the signature in Paragraph 1 above is here genuine signature.**

**IN WITNESS WHEREOF, I have signed this Certificate this 31st day of October, 1994.**

---

**Fred L. Parsons, President  
Southern Illinois Railcar Company**

in order to carry out the intent and effectuate the purpose of the Purchase Agreement;

2. That the form of the Loan Agreement and the \$216,000 Promissory Note dated October 31, 1994 in favor of the Bank and all other related instruments and documents to be entered into by and between this Corporation and the Bank (collectively, the "Loan Documents"), providing for the borrowing by this Corporation from the Bank be, and the same are, in all respects approved;

3. That the President or any other officer of the Corporation be, and each hereby is authorized on behalf of the Corporation to borrow from the Bank, under the terms of the Loan Agreement, up to One Million Seven Hundred and Four Thousand Eight Hundred Dollars (\$1,704,800), and for this purpose to execute and deliver in the name and on behalf of the Corporation the Loan Documents in substantially the forms approved by the Board of Directors, with such changes, additions and amendments thereto as shall be approved by the officer(s) who execute the same, and such other agreements, documents and instruments, and to do all such other acts and things as may be required to consummate the transactions contemplated thereby;

4. That the Secretary of the Corporation is authorized and directed to delivery to the Bank a certified copy of these resolutions and that the same are in conformity with the Articles of Incorporation and Bylaws of the Corporation; and

5. That the officers of the Corporation be and are hereby authorized on behalf of the Corporation to execute and deliver and/or accept any and all other documents or instruments and to take any and all other actions as may be necessary or desirable to effectuate the above transactions.

IN WITNESS WHEREOF, the undersigned have executed this written consent as of the 31st day of October, 1994.

---

Fred L. Parsons

---

Eugenia M. Parsons

BEING ALL OF THE DIRECTORS



**Whereas,** ARTICLES OF INCORPORATION OF  
SOUTHERN ILLINOIS RAILCAR COMPANY  
INCORPORATED UNDER THE LAWS OF THE STATE OF ILLINOIS HAVE BEEN  
FILED IN THE OFFICE OF THE SECRETARY OF STATE AS PROVIDED BY THE  
BUSINESS CORPORATION ACT OF ILLINOIS, IN FORCE JULY 1, A.D. 1984.

*Now Therefore, I, Jim Edgar, Secretary of State of the State  
of Illinois, by virtue of the powers vested in me by law, do hereby  
issue this certificate and attach hereto a copy of the Application  
of the aforesaid corporation.*

**In Testimony Whereof,** I have set my hand and cause to  
be affixed the Great Seal of the State of Illinois.

at the City of Springfield, this 2ND  
day of APRIL AD 19 90 and  
of the Independence of the United States  
the two hundred and 14TH

*Jim Edgar*  
\_\_\_\_\_  
SECRETARY OF STATE

Submit in Duplicate

Payment must be made by Certified  
Check, Cashier's Check or Money  
Order, payable to "Secretary of  
State".

DO NOT SEND CASH.

JIM EDGAR  
Secretary of State  
State of Illinois

## ARTICLES OF INCORPORATION

File #

This Space For Use By  
Secretary of State

Date

License Fee

Franchise Tax

Filing Fee

Clerk

Pursuant to the provisions of "The Business Corporation Act of 1983", the undersigned incorporator(s) hereby adopt the following Articles of Incorporation.

ARTICLE ONE The name of the corporation is SOUTHERN ILLINOIS RAILCAR COMPANY  
(*shall contain the word "corporation", "company", "incorporated",*

*"limited", or an abbreviation thereof*)

ARTICLE TWO The name and address of the initial registered agent and its registered office are:

Registered Agent

Thomas A. Hill

First Name

Middle Name

Last Name

Registered Office

115 Executive Drive, Suite 102

Number

Street

Suite # (A P.O. Box alone is not acceptable)

Highland, IL 62249

City

Zip Code

County

ARTICLE THREE The purpose or purposes for which the corporation is organized are:

If not sufficient space to cover this point, add one or more sheets of this size.

To transact any and all lawful businesses for which corporations may be incorporated under the Illinois Business Corporation Act of 1983.

ARTICLE FOUR Paragraph 1: The authorized shares shall be:

Class	*Par Value per share	Number of shares authorized
common	No par value	1,000

Paragraph 2: The preferences, qualifications, limitations, restrictions and the special or relative rights in respect of the shares of each class are:

If not sufficient space to cover this point, add one or more sheets of this size.

PAID

APR 3 1990

ARTICLE FIVE The number of shares to be issued initially, and the consideration to be received by the corporation therefor, are:

Class	*Par Value per share	Number of shares proposed to be issued	Consideration to be received therefor
Common	n/a	1,000	\$ 10,000.00
			\$
			\$
			\$
TOTAL			\$ 10,000.00

\*A declaration as to a "par value" is optional. This space may be marked "n/a" when no reference to a par value is desired.

5590-608-4

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**ARTICLE SIX      *OPTIONAL***

The number of directors constituting the initial board of directors of the corporation is 2, and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify are:

Name	Residential Address
Fred L. Parsons	16 Sequoia, Troy, IL 62294
Eugenia M. Parson	16 Sequoia, Troy, IL 62294

## ARTICLE SEVEN OPTIONAL

- (a) It is estimated that the value of all property to be owned by the corporation for the following year wherever located will be: \$ \_\_\_\_\_
- (b) It is estimated that the value of the property to be located within the State of Illinois during the following year will be: \$ \_\_\_\_\_
- (c) It is estimated that the gross amount of business which will be transacted by the corporation during the following year will be: \$ \_\_\_\_\_
- (d) It is estimated that the gross amount of business which will be transacted from places of business in the State of Illinois during the following year will be: \$ \_\_\_\_\_

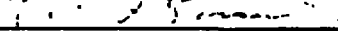
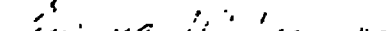
## ARTICLE EIGHT OTHER PROVISIONS

*Attach a separate sheet of this size for any other provision to be included in the Articles of Incorporation, e.g., authorizing pre-emptive rights; denying cumulative voting; regulating internal affairs; voting majority requirements; fixing a duration other than perpetual; etc.*

### NAMES & ADDRESSES OF INCORPORATORS

The undersigned incorporator(s) hereby declare(s), under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

Dated March 29, 1990

Signatures and Names		Post Office Address		
1.	 _____ <i>Signature</i> FRED L. PARSONS _____ <i>Name (please print)</i>	1.	16 Sequoia _____ <i>Street</i> Troy, IL 62294 _____ <i>City/Town</i> <i>State</i> <i>Zip</i>	
2.	 _____ <i>Signature</i> EUGENIA M. PARSONS _____ <i>Name (please print)</i>	2.	16 Sequoia _____ <i>Street</i> Troy, IL 62294 _____ <i>City/Town</i> <i>State</i> <i>Zip</i>	
3.	_____ <i>Signature</i> _____ <i>Name (please print)</i>	3.	_____ <i>Street</i> _____ <i>City/Town</i> <i>State</i> <i>Zip</i>	

(Signatures must be in ink on original document. Carbon copy, xerox or rubber stamp signatures may only be used on conformed copies)

**NOTE: If a corporation acts as incorporator, the name of the corporation and the state of incorporation shall be shown and the execution shall be by its President or Vice-President and verified by him, and attested by its Secretary or an Assistant Secretary.**

Form BCA-210

**File No.**

## ARTICLES OF INCORPORATION

**FILED**

4:2 1:10

**FREE SCHEDULING**

The following fees are required to be paid at the time of issuing the Certificate of Incorporation: FILING FEE \$75.00; INITIAL LICENSE FEE of 1/20th of 1% of the consideration to be received for initial issued shares (see Art 3), MINIMUM \$.50; INITIAL FRANCHISE TAX of 1/10th of 1% of the consideration to be received for initial issued shares (see Art 3), MINIMUM \$25.00.

### EXAMPLES OF TOTAL DUE

Consideration to be Received	TOTAL DUE*
up to \$1,000	\$100.50
\$ 5,000	\$102.50
\$ 10,000	\$105.00
\$ 25,000	\$112.50
\$ 50,000	\$150.00
\$100,000	\$225.00

**\*Includes Filing Fee + License Fee + Franchise Tax**

**RETURN TO:**

**Corporation Department  
Secretary of State  
Springfield, Illinois 62756  
Telephone (217) 782-6961**

**ATTACHMENT A**  
**(Corporate Resolutions)**

**ATTACHMENT B**  
**(Articles of Incorporation)**

## **ATTACHMENT C**

**(Bylaws)**

BYLAWS  
OF  
SOUTHERN ILLINOIS RAILCAR COMPANY

ARTICLE I

OFFICERS

**SECTION 1.1 Illinois Registered Office.** The corporation shall continuously maintain in the State of Illinois a registered office and registered agent whose office is identical with such registered office.

**SECTION 1.2 Other Offices.** The corporation may have other offices within or without the state.

ARTICLE II

SHAREHOLDERS

**SECTION 2.1 Annual Meeting.** An annual meeting of the shareholders shall be held at 10:00 A.M. on the first Tuesday of December for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

**SECTION 2.2 Special Meetings.** Special meetings of the shareholders may be called either by the president, the board of directors, or by the holders of not less than one-fifth of all outstanding shares of the corporation, for the purpose or purposes stated in the call of the meeting.

**SECTION 2.3 Place of Meeting.** The board of directors may designate any place the place of meeting for any annual meeting or for any special meeting called by the board of directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be at the principal office of the corporation.

**SECTION 2.4 Notice of Meetings.** Written notice stating the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, in the case of a merger, consolidation, share exchange, dissolution, or sale, lease, or exchange of assets, not less than twenty nor more than sixty days before the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited with the United States Postal Service, addressed to the shareholder at his address as it appears on the records of the corporation, with postage thereon prepaid. When a meeting is adjourned to another time or place, notice need not be given of the

adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken.

**SECTION 2.5 Meeting of all Shareholders.** If all of the shareholders shall meet at any time and place, either within or without the State of Illinois, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

**SECTION 2.6 Fixing of Record Date.** For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of the corporation may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty days and for a meeting of shareholders, not less than ten days, or in the case of a merger, consolidation, share exchange, dissolution or sale, lease or exchange of assets, not less than twenty days before the date of such meeting. If no record date is fixed for the determination of shareholders entitled to receive payment of a dividend, the date of which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. A determination of shareholders shall apply to any adjournment of the meeting.

**SECTION 2.7 Voting Lists.** The officer or agent having charge of the transfer books for shares of the corporation shall make, within twenty days after record date or ten days before each meeting of shareholders, whichever is earlier, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each shareholder, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be open to inspection by any shareholder for any purpose germane to the meeting, at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and may be inspected by any shareholder during the whole time of the meeting. The original share ledger or transfer book or a duplicate thereof kept in this State, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders.

**SECTION 2.8 Quorum.** The holders of a majority of the outstanding shares of the corporation, present in person or represented by proxy, shall constitute a quorum at any meeting of shareholders, provided that if less than a majority of the outstanding shares are represented at said meeting, a majority of the shares so represented may adjourn the meeting at any time without further notice. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting shall be the act of

the shareholders, unless the vote of a greater number or voting classes is required by The Business Corporation Act or the article of incorporation. At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting. Withdrawal of shareholders from any meeting shall not cause failure of a duly constituted quorum at that meeting.

**SECTION 2.9 Voting of Shares.** Unless otherwise provided in the articles of incorporation and subject to the provisions of Section 2.11 of Article II, each outstanding share, regardless of class, shall be entitled to one vote upon each matter submitted to vote at a meeting of shareholders.

**SECTION 2.10 Voting by Shares by Certain Holders.**

(a) Shares held by the corporation in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares entitled to vote at any given time.

(b) Shares registered in the name of another corporation, domestic or foreign, may be voted by any officer, agent, proxy or other legal representative authorized to vote such shares under the law of incorporation of such corporation.

(c) Shares registered in the name of a deceased person, a minor ward or a person under legal disability may be voted by his or her administrator, executor or court appointed guardian, either in person or by proxy, without a transfer of such shares into the name of such administrator, executor or court appointed guardian. Shares registered in the name of a trustee may be voted by him or her, either in person or by proxy.

(d) Shares registered in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his or her name if authority to do so is contained in an appropriate order of the court by which such receiver was appointed.

(e) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(f) Any number of shareholders may create a voting trust for the purposes of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, and by transferring their shares of such trustee or trustees for the purpose of the agreement. Any such trust agreement shall not become effective until a counterpart of the agreement is deposited with the corporation at its registered office. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right

of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(g) Shareholders may provide for the voting of their shares by signing an agreement for that purpose. A voting agreement under this subsection is not subject to the provisions of subsection (f) above.

**SECTION 2.11 Proxies.** Each shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

**SECTION 2.12 Cumulative Voting.** Unless otherwise provided in the articles of incorporation, in all elections for directors, every shareholder shall have the right to vote, in person or by proxy, the number of shares owned by him, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall see fit.

**SECTION 2.13 Inspectors.** At any meeting of shareholders, the chairman of the meeting may, or upon the request of any shareholder shall, appoint one or more persons as inspectors for such meeting.

(a) Such inspectors shall ascertain and report the number of shares represented at the meeting, based upon their determination of the validity and effect of proxies; count all votes and report the results; and do such other acts as are proper to conduct the election and voting with impartiality and fairness to all the shareholders.

(b) Each report of an inspector shall be in writing and signed by him or by a majority of them if there be more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

**SECTION 2.14 Voting by Ballot.** Voting on any question or in any election may be by voice unless the presiding officer shall order or any shareholder shall demand that voting be by ballot.

**SECTION 2.15 Informal Action by Shareholders.** Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of the shareholders, may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed.



(a) if five days prior notice of the proposed action is given in writing, then to all of the shareholders entitled to vote with respect to the subject matter thereof, by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voting, or

(b) by all of the shareholders entitled to vote with respect to the subject matter thereof.

### ARTICLE III

#### DIRECTORS

**SECTION 3.1 General Powers.** The business of the corporation shall be managed by, or under the direction of, its board of directors.

**SECTION 3.2 Number, Tenure and Qualifications.** The number of directors of the corporation shall be two (2). Each director shall hold office until the next annual meeting of shareholders or, thereafter, until his successor shall have been elected. Directors need not be residents of Illinois or shareholders of the corporation. The number of directors may be increased or decreased from time to time by the amendment of this section, but no decrease shall have the effect of shortening the term of any incumbent director. A director may resign at any time by giving written notice to the board of directors, its chairman, or to the president or secretary of the corporation. A resignation is effective when the notice is given unless the notice specifies a future date. The pending vacancy may be filled before the effective date, but the successor shall not take office until the effective date.

**SECTION 3.3 Regular Meetings.** A regular meeting of the board of directors shall be held without other notice than this bylaw, immediately after the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place for holding of additional regular meetings without other notice than such resolution.

**SECTION 3.4 Special Meetings.** Special meetings of the board of directors may be called by or at the request of the president or any one or more directors. The person or persons authorized to call special meetings of the board of directors may fix any place as the place for holding any special meeting of the board of directors called by them.

**SECTION 3.5 Notice.** Notice of any special meeting shall be given at least three (3) days previous thereto by written notice to each director at his business address. If mailed, such notice shall be deemed to be delivered when deposited with the United States Postal Service so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of

(a) record the minutes of the shareholders' and the board of directors' meetings in one or more books provided for that purpose;

(b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law;

(c) be custodian of the corporate records and of the seal of the corporation;

(d) keep a register of the post-office address of each shareholder which shall be furnished to the secretary by such shareholder;

(e) sign with the president, or a vice-president, or any other officer thereunto authorized by the board of directors, certificates for shares of the corporation, the issue of which shall have been authorized by the board of directors, and any contracts, deeds, mortgages, bonds, or other instruments which the board of directors has authorized to be executed, according to the requirements of the form of the instrument, except when a different mode of execution is expressly prescribed by the board of directors or these bylaws;

(f) otherwise certify the bylaws, resolutions of the shareholders and board of directors and committees thereof, and other documents of the corporation as true and correct copies thereof;

(g) have general charge of the stock transfer books of the corporation; and

(h) perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the board of directors.

**SECTION 4.9 Salaries.** The salaries of the officers shall be fixed from time to time by the board of directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also director of the corporation.

## **ARTICLE V**

### **CONTRACT, LOANS, CHECKS AND DEPOSITS**

**SECTION 5.1 Contracts.** The board of directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

**SECTION 5.2 Loans.** No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors. Such authority may be general or confined to specific instances.

a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

**SECTION 3.6 Quorum.** A majority of the number of directors fixed by these bylaws shall constitute a quorum for transaction of business at any meeting of the board of directors, provided that if fewer than a majority of such number of directors are present at said meeting, a majority of the directors present may adjourn the meeting at any time without further notice.

**SECTION 3.7 Manner of Acting.** The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by statute, these bylaws, or the articles of incorporation.

**SECTION 3.8 Director Participation in Meeting by Telecommunications.** A director may participate in a meeting of the board of directors by means of conference telephone or similar communications equipment enabling all directors participating in the meeting to hear one another, and participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

**SECTION 3.9 Informal Action by Director.** Unless specifically prohibited by the articles of incorporation or these bylaws, any action required to be taken at a meeting of the board of directors of the corporation, or any other action which may be taken at a meeting of the board of directors or a committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors entitled to vote with respect to the subject matter thereof, or by all the directors or all the members of the committee shall have the same effect as a unanimous vote and may be stated as such in any document filed with the Secretary of State or elsewhere.

**SECTION 3.10 Vacancies.** Any vacancy occurring in the board of directors and any directorship to be filled by reason of any increase in the number of directors may be filled by election at any annual meeting or at a special meeting of shareholders called for that purpose.

**SECTION 3.11 Removal of Directors.** One or more of the directors may be removed, with or without cause, at a meeting of shareholders by the affirmative vote of the holders of a majority of the outstanding shares then entitled to vote at an election of directors, except as follows:

(a) No director shall be removed at a meeting of shareholders unless the notice of such meeting shall state that a purpose of the

meeting is to vote upon the removal of one or more directors named in the notice. Only the named director or directors may be removed at such meeting.

(b) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed, with or without cause, if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors.

(c) If a director is elected by a class or series of shares, he or she may be removed only by the shareholders of that class or series.

**SECTION 3.12 Compensation.** The board of directors, by the affirmative vote of a majority of directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise. By resolution of the board of directors, the directors may be paid their expenses, if any, of attendance at each meeting of the board. No such payment previously mentioned in this section shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

**SECTION 3.13 Committees.**

(a) A majority of the directors may create one or more committees and appoint members of the board to serve on the committee or committees. Each committee shall have two or more members, who serve at the pleasure of the board.

(b) Unless the appointment by the board of directors requires a greater number, a majority of any committee shall constitute a quorum, and a majority of a quorum is necessary for committee action. A committee may act by unanimous consent in writing without a meeting, and, subject to the provisions of the bylaws or actions by the board of directors, the committee by majority vote of its members shall determine the time and place of meetings and the notice required therefor.

(c) To the extent specified by the board of directors, each committee may exercise the authority of the board of directors to the extent permitted by law.

**SECTION 3.14 Presumption of Assent.** A director of the corporation who is present at a meeting of the board of directors at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to

dissent shall not apply to a director who voted in favor of such action.

#### ARTICLE IV

##### OFFICERS

**SECTION 4.1 Number.** The officers of the corporation shall be a president, a secretary, a treasurer, if desired, any number of vice presidents, treasurers, assistant treasurers, assistant secretaries, or other officers as may be elected by the board of directors. Any two or more offices may be held by the same person.

**SECTION 4.2 Election and Term of Office.** The officers of the corporation shall be elected or appointed annually by the board of directors at the first meeting of the board of directors held after each annual meeting of shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Vacancies may be filled or new officers created and filled at any meeting of the board of directors. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Election of an officer shall not of itself create contract rights.

**SECTION 4.3 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term.

**SECTION 4.4 Removal.** Any officer elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

**SECTION 4.5 President.** The president shall be the principal executive officer of the corporation. Subject to the direction and control of the board of directors, he shall be in charge of the business of the corporation; he shall see that the resolutions and directions of the board of directors are carried into effect except in those instances in which that responsibility is specifically assigned to some other person by the board of directors; and, in general, he shall discharge all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time. He shall preside at all meetings of the shareholders and of the board of directors. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the corporation or a different mode of execution is expressly prescribed by the board of directors or these bylaws, he may execute for the corporation certificates for its shares, and any contracts, deeds, mortgages, bonds, or other instruments which the board of directors has authorized to be executed, and he may accomplish such execution either under or without the seal of the corporation and

either individually or with the secretary, any assistant secretary, or any other officer thereunto authorized by the board of directors, according to the requirements of the form of the instrument. He may vote all securities which the corporation is entitled to vote except as and to the extent such authority shall be vested in a different officer or agent of the corporation by the board of directors.

**SECTION 4.6 The Vice-Presidents.** The vice-presidents (or in the event there be more than one vice president, each of the vice-presidents) shall assist the president in the discharge of his duties as the president may direct and shall perform such other duties as from time to time may be assigned to him by the president or by the board of directors. In the absence of the president or in the event of his inability or refusal to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order designated by the board of directors, or by the president if board of directors has not made such designation, or in the absence of any designation, then in the order of seniority of tenure as vice-president) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the corporation or a different mode of execution is expressly prescribed by the board of directors or these bylaws, the vice-president (or each of them if there are more than one) may execute for the corporation certificates for its shares and any contracts, deeds, mortgages, bonds or other instruments, which the board of directors has authorized to be executed, and he may accomplish such execution either under or without a seal of the corporation and either individually or with the secretary, any assistant secretary, or any other officer thereunto authorized by the board of directors, according to the requirements of the form of the instrument.

**SECTION 4.7 The Treasurer.** The treasurer shall be the principal accounting and financial officer of the corporation. He shall:

(a) have charge of and be responsible for the maintenance of adequate books of account for the corporation;

(b) have charge and custody of all funds and securities of the corporation, and be responsible therefor and for the receipt and disbursement thereof; and

(c) perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or by the board of directors.

If required by the board of directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the board of directors may determine.

**SECTION 4.8 The Secretary.** The secretary shall:

**SECTION 5.3 Checks, Drafts, etc.** All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the board of directors.

**SECTION 5.4 Deposits.** All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board of directors may select.

## **ARTICLE VI**

### **SHARES AND THEIR TRANSFER**

**SECTION 6.1 Shares Represented by Certificates and Uncertificated Shares.** Shares either shall be represented by certificates or shall be uncertificated shares.

(a) Certificates representing shares of the corporation shall be signed by the appropriate officers and may be sealed with the seal or a facsimile of the seal of the corporation. If a certificate is countersigned by a transfer agent or registrar, other than the corporation or its employee, any other signatures may be facsimile. Each certificate representing shares shall be consecutively numbered or otherwise identified and shall also state the name of the person to whom issued, the number and class of shares (with designation of series, if any), the date of issue, and that the corporation is organized under Illinois law. If the corporation is authorized to issue shares of more than one class or of series within a class, the certificate shall also contain such information or statement as may be required by law.

(b) Unless prohibited by the articles of incorporation, the board of directors may provide by resolution that some or all of any class or series of shares shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until the certificate has been surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send the registered owner thereof a written notice of all information that would appear on a certificate. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares shall be identical to those of the holders of certificates representing shares of the same class and series.

(c) The name and address of each shareholder, the number and class of shares held, and the date on which the shares were issued shall be entered on the books of the corporation. The person in whose name shares stand on the books of the corporation shall be deemed the owner thereof for all purposes as regards the corporation.

**SECTION 6.2 Lost Certificates.** If a certificate representing shares has allegedly been lost or destroyed, the board of directors may in its discretion, except as may be required by law, direct that a new certificate be issued upon such indemnification and other reasonable requirements as it may impose.

**SECTION 6.3 Transfers of Shares.** Transfer of shares of the corporation shall be recorded on the books of the corporation. Transfer of shares represented by a certificate, except in the case of a lost or destroyed certificate, shall be made on surrender for cancellation of the certificate for such shares. A certificate presented for transfer must be duly endorsed and accompanied by proper guaranty of signature and other appropriate assurances that the endorsement is effective. Transfer of an uncertified shares shall be made on receipt by the corporation of an instruction from the registered owner or other appropriate person. The instruction shall be in writing or a communication in such form as may be agreed upon in writing by the corporation.

## **ARTICLE VII**

### **FISCAL YEAR**

**SECTION 7.1 Fixed by Board of Directors.** The fiscal year of the corporation shall be fixed by resolution of the board of directors.

## **ARTICLE VIII**

### **DISTRIBUTIONS**

**SECTION 8.1 Declared by Board of Directors.** The board of directors may authorize, and the corporation may make, distributions to its shareholders, subject to any restrictions in its articles of incorporation or provided by law.

## **ARTICLE IX**

### **SEAL**

**SECTION 9.1 Force and Effect.** The corporate seal shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Illinois." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced, provided that the affixing of the corporate seal to an instrument shall not give the instrument additional force or effect, or change the construction thereof, and the use of the corporation is not mandatory.

## **ARTICLE X**

### **WAIVER OF NOTICE**

**SECTION 10.1 Waiver in Lieu of Notice.** Whenever any notice is required to be given under the provision of these bylaws or under the



provisions of the articles of incorporation or under the provisions of The Business Corporation Act of the State of Illinois, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute waiver of notice thereof unless the person at the meeting objects to the holding of the meeting because proper notice was not given.

## ARTICLE XI

### INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS

**SECTION 11.1 Power to Hold Harmless.** The corporation shall have the power to indemnify any person who was or is a party or is threatened to be made party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee or serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment or settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the corporation or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

**SECTION 11.2 Power to Indemnify Litigant.** The corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in

good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such persons shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation, unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses as the court shall deem proper.

**SECTION 11.3 Reimbursement Authorized.** To the extent that a director, officer, employee, or agent of a corporation has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Section 11.1 and 11.2 above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection therewith.

**SECTION 11.4 Determination if Reimbursement is Proper.** Any indemnification under Section 11.1 and 11.2 above (unless ordered by a court) shall be made by the corporation only as authorized in the specific case, upon determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section s 11.1 or 11.2 above. Such determination shall be made:

(a) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or

(b) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or

(c) by the shareholders.

**SECTION 11.5 Advance of Expenses.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the board of directors in the specific case, upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the corporation as authorized in this Article.

**SECTION 11.6 Non-Exclusivity.** The indemnification provided by this article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any contract, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person

who has ceased to be director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**SECTION 11.7 Right to Acquire Insurance.** The corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of this Article.

**SECTION 11.8 Notice to Shareholders.** If a corporation has paid indemnity or had advanced expenses to a director, officer, employee or agent, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholder's meeting.

**SECTION 11.9 "Corporation"; Definition.** For purposes of this Article, references to "the corporation" shall include, in addition to the surviving corporation, any merging corporation (including any corporation having merged with a merging corporation) absorbed in a merger which, if its separate existence has continued, would have had the power and authority to indemnify its directors, officers, and employees or agents, so that any person who was a director, officer, employee or agent of such merging corporation, or was serving at the request of such merging corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article with respect to the surviving corporation as such person would have with respect to such merging corporation if its separate existence had continued.

**SECTION 11.10 Miscellaneous Definitions.** For purposes of this Article, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries. A person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interest of the corporation" as referred to in this Article.

## ARTICLE XII

### REPAYMENT OF DISALLOWED DEDUCTION

**SECTION 12.1 Full Reimbursement by Officers.** Any payments made to an officer of the corporation such as salary, commission, bonus, interest, rent, medical reimbursement or entertainment expense incurred by him which, for Federal income tax purposes, shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service, shall be reimbursed by such officer to the corporation to the full extent of such disallowance.

**SECTION 12.2 Security for Repayment.** It shall be the duty of the directors, as a board, to enforce payment of such amount disallowed. In lieu of payment by the officer, subject to the determination of the directors, proportionate amounts may be withheld from his future compensation payments until the amount owed to the corporation has been recovered.

## ARTICLE XIII

### AMENDMENTS

**SECTION 13.1 Determined by Directors.** Unless reserved to the shareholders by the articles of incorporation, the bylaws of the corporation may be made, altered, amended or repealed by the shareholders or the board of directors, but no bylaw adopted by the shareholders may be altered, amended or repealed by the shareholders or the board of directors, if the bylaws so provide. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Schedule 3.1(a)(iv)

Form of Opinion of Borrower's Counsel

See following pages.

Schedule 7.2  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of October 31, 1994

REQUIRED CONSENTS AND GOVERNMENTAL APPROVALS

The following is a complete and correct list of (a) all consents or approvals of the stockholders of the Borrower, and (b) Governmental Approvals required in connection with the execution, delivery and performance of the Loan Agreement, Chattel Mortgage and Security Agreement, the Promissory Note, the other Loan Documents, and any Lease:

None.

There are attached true and correct copies (certified in the case of Government Approvals) of each such consent or approval.

Not Applicable.

Schedule 7.3  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of October 31, 1994

LITIGATION

In May 1994, Borrower entered into five (5) separate Railcar Lease Agreements with Archer Daniels Midland Company (hereinafter "ADM") pursuant to which Borrower agreed to lease ADM a total of five hundred seventy (570) railcars. Under the terms of the Railcar Lease Agreements, the Borrower agreed to use its best efforts to deliver the railcars during the months of either August 1994, August and September 1994, October and November 1994, or March and April 1995. The Agreements further provided that the Borrower's obligation to furnish the railcars was subject to all causes beyond Borrower's control. Because of market conditions, the Borrower, despite its best efforts, has been unable to deliver some of the railcars required under two (2) of the Leases within the specified delivery periods. However, as of the date hereof, the Borrower is only fifteen (15) railcars behind on its delivery obligations under these two (2) Leases and the Borrower anticipates that it will be brought current on all delivery obligations within the next 4-5 business days. As of the date hereof, the Borrower is current or ahead of schedule on its delivery obligations under the other three (3) Leases. On or about September 30, 1994, ADM alleged that the Borrower had not complied with its obligations under the "delivery" and "best efforts" provisions of the two Leases at issue and that Borrower had diverted railcars from such Leases to higher yielding leases. The Borrower believes that it has complied with its contractual obligations under these Leases and that it has used its best efforts to deliver the railcars to ADM in compliance with the time schedule set forth in such Leases. To date, ADM has not made any formal demand for any money damages from the Borrower as a result of the Borrower's alleged failure to use its best efforts to deliver the railcars in accordance with the time requirements set forth in these Leases. Borrower believes that any claim filed by ADM against the Borrower in connection with this matter would be without merit. In addition, the Borrower believes that any damages recoverable by ADM in connection with this matter would not have a material adverse affect on the Borrower's financial condition or results of operations.

Schedule 10.1  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of October 31, 1994

CERTIFICATE AS TO FINANCIAL STATEMENTS

I, \_\_\_\_\_, Chief Financial Officer of Southern Illinois Railcar Company (the "Borrower"), hereby certify pursuant to Section 10.1 of the Loan Agreement, Chattel Mortgage and Security Agreement dated as of October 31, 1994, between Mark Twain Illinois Bank (the "Bank") and the Borrower that:

1. The accompanying unaudited financial statements of the Borrower as at \_\_\_\_\_ and for the \_\_\_\_\_ months ending \_\_\_\_\_, are complete and correct and present accurately, in accordance with generally accepted accounting principles (except for changes described below), the financial position of the Borrower as at the end of such period, and the results of operations and the changes in the financial position for such period, and for the elapsed portion of the fiscal year ended with the last day of such period, in each case on the basis presented and subject only to normal year-end auditing adjustments.

2. The changes from generally accepted accounting principles are as follows:

\_\_\_\_\_  
Chief Financial Officer

Dated: \_\_\_\_\_, 199\_



Exhibit A

FORM OF PROMISSORY NOTE

\$ \_\_\_\_\_

Edwardsville, Illinois  
\_\_\_\_\_, 199\_

FOR VALUE RECEIVED, SOUTHERN ILLINOIS RAILCAR COMPANY, an Illinois corporation (the "Borrower"), hereby promises to pay to the order of MARK TWAIN ILLINOIS BANK, an Illinois banking corporation (who, together with its successors and assigns is hereinafter referred to as, the "Bank"), in lawful money of the United States of America and in immediately available funds, the principal sum of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_) (the "Principal Sum") on or before \_\_\_\_\_, 199\_, together with interest on the Principal Sum outstanding at the end of each day at a fluctuating rate per annum equal to two percent (2.0%) above the "Corporate Base Rate" (as that term is defined in the "Loan Agreement", as described below) in effect on such day. After the date hereof, the foregoing fluctuating rate of interest shall be increased or decreased, as the case may be, by an amount equal to any increase or decrease in the Corporate Base Rate, with such adjustments to be effective as of the opening of business on the day that any such change in the Corporate Base Rate becomes effective. Interest shall be calculated on a daily basis (computed on the actual number of days elapsed over a year of 360 days), commencing on the date the Principal Sum is advanced to the Borrower.

This Note is a Promissory Note referred to in that certain Loan Agreement, Chattel Mortgage and Security Agreement dated as of October 31, 1994 (the "Loan Agreement"), between the Borrower and the Bank. Reference is hereby made to the Loan Agreement for the description of the collateral pledged by the Borrower to the Bank to secure the Borrower's obligations hereunder and the rights of the Bank with respect to such collateral.

Principal and interest shall be payable as follows:

(a) Interest on the entire outstanding principal balance hereof shall be payable on the first day of each month, computed through the last calendar day of the immediately preceding month, commencing \_\_\_\_\_ 1, 199\_, and on the first day of each succeeding month thereafter, to and including \_\_\_\_\_ 1, 199\_; and

(b) On \_\_\_\_\_, 199\_, a final principal payment equal to the entire unpaid principal balance hereof, together with any and all accrued interest thereon and any other amounts due hereunder shall be immediately due and payable.

In the event that any outstanding balance of principal, interest, fees or other amounts due hereunder is not paid when due (whether by acceleration or otherwise) (a "Default Date"), the Borrower shall pay to the Bank, upon demand, interest on the entire principal amount then outstanding and, to the extent permitted by law, on such interest, fees and other amounts, from the Default Date until such past due principal, interest, fees or other amounts are paid in full, at a fluctuating per annum rate equal to the "Default Rate" (as that term is defined in the Loan Agreement) until paid in full.

The Borrower shall have the right to prepay the Note in whole on any installment payment date after giving the Bank thirty (30) days' prior written notice of its intention to make such prepayment, by paying such prepayment together with all accrued but unpaid interest and all other sums due under the Loan Documents, but without any prepayment premium. This Note is also subject to certain mandatory prepayments as set forth in Section 2.5(b) of the Loan Agreement.

All payments of principal, fees and interest due hereinafter shall be made by wire transfer in accordance with the wire transfer instructions provided by the Bank to the Borrower and such payments shall be effective only upon receipt. All payments shall be made in U.S. Dollars, which shall be the exclusive currency for the payment of the obligations hereunder, free of any restrictions or deductions whatsoever for present or future taxes, charges, assessments, withholdings or costs, the payment of which shall be the responsibility of the Borrower.

Without prejudice to any right of the Bank to collect and receive any payments due by the Borrower hereunder, the Bank may debit the Collateral Account maintained by the Borrower with the Bank for any sums not paid when due.

Except as otherwise expressly provided for in Section 2.8 of the Loan Agreement, all payments received by the Bank shall be applied by it in such order as it, in its sole discretion, shall determine.

In the event of the declaration by the Bank of an Event of Default (as defined therein) under the Loan Agreement, then this Note shall be in default and, at the option of the Bank, the balance of the Principal Sum then due hereunder, together with all accrued but unpaid interest thereon, and prepayment premium,

if any, shall become immediately due and payable without further notice, such further notice being expressly waived.

The Borrower promises to pay to the Bank, on demand, all costs and expenses incurred by the Bank in connection with the collection and enforcement of this Note, including, without limitation, all attorneys' (and paralegals') fees and expenses and all court costs incurred by it, whether or not proceedings are brought.

The rights and remedies of the holder of this Note, as provided herein, shall be cumulative and concurrent and may be pursued singularly, successively or together at the sole discretion of the holder, and may be exercised as often as occasion therefor shall occur, and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.

No failure or delay by the Bank to insist upon the strict performance of any term, condition, covenant or agreement of this Note or any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, covenant or agreement, or of any such breach, or preclude the Bank from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any amount payable under the terms of this Note, the Bank shall not be deemed to have waived the right either to require prompt payment when due of all other amounts payable under the terms of this Note or to declare an Event of Default for the failure to effect such prompt payment of any such other amount. No course of dealing or conduct shall be effective to amend, modify, waive, release or change any provision of this Note.

In the event that any one or more of the provisions (or any part of any provision) of this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, or in the event that any one or more of the provisions of this Note operates or would prospectively operate to invalidate this Note, then and in either of those events, such provision or provisions only shall be deemed null and void and shall not affect any other provisions (or remaining part of the affected provision) of this Note and the remaining provisions (or remaining part of the affected provision) of this Note shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

The Borrower hereby waives presentment, protest and demand, notice of protest, notice of demand and of dishonor and non-payment of this Note, and expressly agrees that this Note or any payment hereunder may be extended from time to time without in

any way affecting the liability of the Borrower. The Borrower hereby waives and releases, to the extent permitted by law, all errors and all rights of appeal, exemption or stay of execution upon any real estate or personal property, and all other rights to which the Borrower may otherwise be entitled under any applicable law.

The Borrower hereby irrevocably submits to the jurisdiction of any state or federal court sitting in the State of Illinois over any suit, action or proceeding arising out of or relating to this Note or any of the other Loan Documents. The Borrower irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon the Borrower and may be enforced in any court in which the Borrower is subject to jurisdiction by a suit upon such judgment provided that service of process is effected upon the Borrower as provided in this Note or as otherwise permitted by applicable law.

The Borrower hereby consents to process being served in any suit, action or proceeding instituted in connection with this Note or any of the other Loan Documents by the mailing of a copy thereof by certified mail, postage prepaid, return-receipt requested, to the Borrower. The Borrower irrevocably agrees that such service shall be deemed to be service of process upon the Borrower in any such suit, action or proceeding. Nothing in this paragraph shall affect the right of the Bank to serve process in any manner otherwise permitted by law, and nothing in this Section will limit the right of the Bank otherwise to bring proceedings against the Borrower in the courts of any jurisdiction or jurisdictions.

THE BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE BORROWER AND THE BANK MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS NOTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE BORROWER, AND THE BORROWER REPRESENTS THAT NO REPRESENTATION OF FACT OR OPINION HAS BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE BORROWER FURTHER REPRESENTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN

FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS  
WAIVER WITH SUCH COUNSEL.

THIS NOTE, HAVING BEEN EXECUTED BY THE BORROWER AND  
DELIVERED TO THE BANK IN THE STATE OF ILLINOIS, IS TO BE GOVERNED  
BY, CONSTRUED UNDER AND ENFORCED IN ALL RESPECTS ACCORDING TO,  
THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REFERENCE TO CONFLICT  
OF LAWS RULES. THIS NOTE SHALL BE BINDING UPON THE BORROWER, ITS  
SUCCESSORS AND PERMITTED ASSIGNS, AND SHALL INURE TO THE BENEFIT  
OF THE BANK.

IN WITNESS WHEREOF, the Borrower has caused this Note to be  
duly executed, under seal, as of the day and year first above  
written.

WITNESS:

SOUTHERN ILLINOIS RAILCAR  
COMPANY

By: \_\_\_\_\_  
Fred L. Parsons  
President

EXHIBIT B  
to  
Loan Agreement, Chattel Mortgage  
and Security Agreement  
dated as of October 31, 1994

FORM OF NOTICE AND  
ACKNOWLEDGMENT OF ASSIGNMENT

\_\_\_\_\_, 199\_

TO: Mark Twain Illinois Bank  
One Mark Twain Bank Plaza  
Edwardsville, IL 62025

Reference is made to the Railcar Lease Agreement dated as of \_\_\_\_\_, 19\_\_ (the "Lease"), between Southern Illinois Railcar Company, an Illinois corporation ("Lessor"), and \_\_\_\_\_

\_\_\_\_\_ (collectively, the "Lessee"), relating to the lease of \_\_\_\_\_ covered hopper railcars bearing the road numbers set forth on Schedule 1 hereto (collectively, the "Railcars"). Words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Lease.

Lessee has been notified by Lessor that Lessor has assigned to Mark Twain Illinois Bank, a Missouri banking corporation (the "Bank"), for collateral security purposes only, and has granted to the Bank a continuing, first priority security interest in, and chattel mortgage lien on, all of Lessor's right, title and interest in and to, among other things, the Lease, all rental payments, casualty value payments and other sums due and to become due and payable by the Lessee to the Lessor from time to time thereunder, the Railcars and all insurance proceeds and requisition compensation relating thereto.

Lessee, intending to be legally bound hereby and for good and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby jointly and severally:

A. Acknowledges and consents to the assignment by Lessor to the Bank, for collateral security purposes only, of all of lessor's right, title, interest in, to and under the Lease, all rental payments, casualty value payments and other sums due and to become due and payable by the Lessee to the Lessor from time to time thereunder, the Railcars and all insurance proceeds and

requisition compensation relating thereto, including, without limitation:

(i) the immediate and continuing right to receive and collect all rental payments, casualty value payments, insurance proceeds and other payments, tenders and security now or hereafter payable to or receivable by Lessor under the Lease; provided, that so long as no Event of Default or event which, with the giving of notice or passage of time or both, would constitute an Event of Default under that certain Loan Agreement, Chattel Mortgage and Security Agreement dated as of October 31, 1994 (the "Loan Agreement"), between Lessor and the Bank (either such event, a "Loan Agreement"), Lessor shall be entitled to receive and collect all such payments; and Lessee agrees that upon its receipt of notice by the Bank of the occurrence of such Loan Default, Lessee shall forthwith make all such payments, tenders and security directly to the Bank;

(ii) the right, following a Loan Default to make all waivers and amendments and to enter into any agreements relating to the Lease or any provisions thereof with the Lessee directly; and

(iii) the right to take such action upon the occurrence of a default or an Event of Default under the Lease as shall be permitted by the Lease, by law or otherwise, and to do any and all other things whatsoever which Lessor is or may be entitled to do under the Lease as if the Bank was originally named lessor thereunder and was a party thereto.

B. Acknowledges and agrees that, notwithstanding said assignment, the Bank has not assumed and does not assume the responsibility to discharge or perform any liability, duty or obligation of Lessor to be performed under the Lease, and Lessee agrees that it shall look solely to Lessor for the discharge, performance and satisfaction of any such liabilities, duties and obligations.

C. Represents and warrants that the Lease and this Notice and Acknowledgment of Assignment have been duly authorized, executed and delivered by it (as the case may be) and constitute the valid and legally binding agreements, enforceable against it (as the case may be) in accordance with their terms.

D. Represents and warrants that no Event of Default, or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default under the Lease has occurred and is continuing.

E. Represents and warrants that Lessee has not prepaid any of the rent due Lessor under the Lease and that no offset or

deduction exists with respect to Lessee's obligation to pay rent, casualty value or any other sums payable by Lessee to Lessor under and pursuant to the terms of the Lease; and do hereby further represent and warrant that, as of the date hereof, there remains due and payable under the Lease \_\_\_\_\_ consecutive monthly installments of \$\_\_\_\_\_ each, payable in advance, on the first day of each calendar month during the term thereof, with the next such installment being due and payable on \_\_\_\_\_, 199\_.

F. Agrees to provide to the Bank evidence of the insurances it currently maintains on the Railcars, together with the appropriate endorsements naming the Bank as an additional insured and sole loss payee on all such insurance policies.

G. Agrees, effective immediately, to wire transfer all rent and other payments to be made by Lessee to Lessor under the Lease, directly to the Bank at the following address, or such other address as the Bank shall notify Lessee in writing:

Mark Twain Bank Illinois  
One Mark Twain Bank Plaza  
Edwardsville, Illinois 62025

H. Represents and warrants that the document attached hereto as Exhibit A is a true, correct and complete original copy of the Lease, that such document is in full force and effect and except as otherwise described herein has not been amended or modified in any respect, and that the Lease sets forth the entire agreement between Lessor and Lessee with respect to the subject matter thereof.

The Bank agrees to make the original, executed copy of the Lease, if such document is in the Bank's possession, available to Lessee in any proceeding in which such copy is reasonably necessary to permit Lessee to enforce the Lease.

This Notice and Acknowledgment of Assignment, when accepted by the Bank by signing the acceptance hereof, shall be deemed to be a contract under the laws of the State of Illinois and for all purposes, shall be construed in accordance with the internal laws (as opposed to conflicts of law provisions) and decisions of such state.

WITNESS:

\_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)



WITNESS:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

ACCEPTED AND AGREED TO:

MARK TWAIN ILLINOIS BANK

By: \_\_\_\_\_ (SEAL)

Exhibit C

Form of Parsons Guaranty

See following pages.

BORROWING SCHEDULE

This is a Borrowing Schedule referred to and defined in that certain Loan Agreement, Chattel Mortgage and Security Agreement dated as of October 31, 1994 by and between Southern Illinois Railcar Company and Mark Twain Illinois Bank.

1. Railcars to be Acquired.

See Schedule 1-A attached hereto (the "Railcars")

2. Maximum Advance Per Railcar. \$14,400.00

3. Lease. N/A.

4. Railcar Release Price. \$18,000.00

IN WITNESS WHEREOF, the undersigned have entered into this Borrowing Schedule as of the 31st day of October, 1994.

WITNESS:

SOUTHERN ILLINOIS RAILCAR COMPANY

Lyman M. Parsons

By: [Signature] (SEAL)  
Fred L. Parsons  
President

WITNESS:

MARK TWAIN ILLINOIS BANK

Edward J. Liberman


By: [Signature] (SEAL) (NOTS)  
Dennis M. Terry  
President

MARK TWAIN ILLINOIS BANK

STATE OF MISSOURI                    )  
  ) SS:  
CITY OF ST. LOUIS                    )

On this 31st day of October, 1994, before me, a Notary Public of the City and State aforesaid, personally appeared Fred L. Parsons, to me personally known, who being by me duly sworn, says that he is the President of Southern Illinois Railcar Company, an Illinois corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

AS WITNESS my hand and notarial seal


  
CHANDRAL DALTON  
NOTARY PUBLIC—STATE OF MISSOURI  
ST. LOUIS COUNTY  
~~MY COMMISSION EXPIRES SEPT 30, 1998~~

My commission expires:

STATE OF MISSOURI                    )  
  ) SS:  
CITY OF ST. LOUIS                    )

On this 31st day of October, 1994, before me, a Notary Public of the City and State aforesaid, personally appeared Dennis M. Terry, to me personally known, who being by me duly sworn, says that he is the President of Mark Twain Illinois Bank, an Illinois banking corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

AS WITNESS my hand and notarial seal

  
CHANDRAL DALTON  
NOTARY PUBLIC—STATE OF MISSOURI  
ST. LOUIS COUNTY  
~~MY COMMISSION EXPIRES SEPT 30, 1998~~

My commission expires:

SCHEDULE 1-A TO BORROWING SCHEDULE

SOUTHERN ILLINOIS RAILCAR COMPANY  
LISTING OF R.F. CUNNINGHAM CO., INC. CARS PURCHASED  
YEAR BUILT & CUBIC CAPACITY

<u>CAR NUMBER</u>	<u>YEAR BUILT</u>	<u>CU. CAP.</u>
CUNX 1116	1965	4700
CUNX 1117	1965	4700
CUNX 1118	1965	4700
CUNX 1119	1965	4700
CUNX 1120	1965	4700
CUNX 1121	1965	4700
CUNX 1122	1965	4700
CUNX 1123	1965	4700
CUNX 1124	1965	4700
CUNX 1125	1965	4700
CUNX 1126	1965	4700
CUNX 1127	1965	4700
CUNX 1128	1965	4700
CUNX 1129	1965	4700
CUNX 1130	1965	4700

## **CONTINUING CONTRACT OF GUARANTY**

**WHEREAS** SOUTHERN ILLINOIS RAILCAR COMPANY, an Illinois corporation, hereinafter referred to as Debtor, has applied for credit and/or is presently indebted or obligated to MARK TWAIN ILLINOIS BANK hereinafter referred to as Bank, and

**WHEREAS** to induce Bank to extend credit to Debtor and/or to presently refrain from making demand on Debtor and to otherwise pursue Bank's legal remedies against Debtor, the undersigned, hereinafter referred to as Guarantor, has agreed to guaranty the credit of Debtor pursuant to and in strict accordance with the terms and conditions hereinafter set forth.

**NOW**, therefore, in consideration of the sum of \$1.00 to Guarantor paid by Bank, the extension of credit to Debtor by Bank and/or Bank's presently refraining from making demand on Debtor and otherwise pursuing Bank's legal remedies against Debtor and other good and valuable considerations, receipt of which is hereby acknowledged, it is agreed as follows:

1. Guarantor does hereby for himself, his heirs, executors, administrators, successors and assigns, unconditionally guaranty on a continuing basis to Bank, its successors and assigns, the prompt, faithful and full payment, when due, of any and all loans, advances, indebtedness and obligations of any kind or nature now or hereafter owing by Debtor to Bank, hereinafter collectively referred to as Liabilities or, in the singular, Liability, evidenced by promissory note or notes, negotiable or non-negotiable, drafts, acceptances, commercial paper, letters of credit, leases, contracts, or any other written instruments together with any and all renewals, extensions and modifications thereof and whether Liabilities are unsecured or secured by collateral pledge or in any manner.

2. Guarantor shall, upon demand, when due or matured in accordance with the provisions of any instrument or document executed by Debtor in connection with Liabilities, pay to Bank, its successors and assigns, the amount of any Liability, irrespective of the validity, regularity or enforceability of any instrument or writing evidencing such Liability or of the Liability itself, said payment to be made upon the maturity of such Liability or at any earlier time by reason of Bank's power of acceleration and if the Liability is secured, said payment shall be made irrespective of the validity, regularity or enforceability of any instrument or writing evidencing such security or of the security itself and it shall not be necessary for Bank to resort to such security before enforcing Guarantor's liability hereunder. Demand may be made upon Guarantor for the enforcement of this guaranty without the necessity of action at any time by Bank against Debtor. Any action taken by Bank against Debtor, including foreclosure of any security held by Bank, shall in no event be considered a waiver of any rights against Guarantor under this guaranty and Bank shall, at its sole discretion, have the right at any time to discontinue any action or proceedings against Debtor and require full payment by Guarantor of Liabilities together with attorney's fees, cost of the proceedings and court costs. Any recovery by Bank against Debtor, whether by settlement, execution or foreclosure of collateral, shall be credited against Guarantor's liability hereunder, it being however agreed that a compromise and settlement of any Liability shall, in no sense, compromise or settle Guarantor's liability hereunder, but Guarantor shall continue to be liable for any difference between the full amount of Liabilities and the net proceeds of any amounts realized by Bank from Debtor.

3. Guarantor does hereby waive presentment of any instrument, demand for payment, protest and notice of non-payment and Guarantor waives all rights arising out of any statute now existing or hereafter enacted with respect to suretyship and which may otherwise require Bank at any time to take legal action against Debtor. Guarantor does hereby waive notice of the acceptance of this guaranty and notice of any Liability contracted or incurred by Debtor.

4. Bank may, without notice to Guarantor, renew, extend, modify or otherwise change the time for payment of, or otherwise change the terms (including the rate of interest) of any loan or indebtedness of Debtor forming part of Liabilities and may from time to time at its own discretion, without notice to Guarantor, release, substitute, diminish or exchange any security or securities, property or choses in action held by it as collateral in connection with any Liability without in any way affecting Guarantor's obligation hereunder.

5. Guarantor does further guarantee the liability of Debtor to Bank in any capacity arising out of (1) the sale, negotiation or discount with or without recourse, transfer or assignment by Debtor to Bank of accounts receivable, commercial paper, notes, whether negotiable or non-negotiable, leases, contracts or any instrument, (2) any obligation or liability of Debtor to Bank arising out of Debtor's guaranty of or liability for the indebtedness, liability or obligations of others, (3) overdrafts and (4) in general, in connection with any and all indebtedness, obligations and liabilities of Debtor to Bank, not herein otherwise described, irrespective of the kind and nature thereof or whether in existence upon the date of these presents or at any time hereafter all of which liabilities of Debtor to Bank shall also be Liabilities, or, in the singular, Liability as hereinbefore or hereinafter set forth.

6. This guaranty shall continue in full force and be binding upon Guarantor and Bank may continue to act in reliance hereon until the actual receipt by an officer of Bank of written notice from Guarantor not

to give further accommodation hereunder. However, notwithstanding receipt of such notice by Bank, this guaranty shall so continue in full force and effect with respect to any loans or advances Bank has committed or is otherwise obligated to make to or for the account of Debtor arising out of a commitment or obligation existing at the time of receipt of such notice of termination. Furthermore, Bank may renew, extend or otherwise modify any loan or indebtedness of Debtor forming part of Liabilities after receipt of such notice of termination without affecting the obligations of Guarantor hereunder (except to the extent that the principal amount of any indebtedness is increased, but in such an instance the obligations of Guarantor hereunder shall remain in full force and effect except for the increased amount of the Liabilities).

7. Guarantor does hereby give and grant unto Bank, as security for Guarantor's liability and obligations hereunder, a lien, with full right of setoff, upon any deposit or other account of Guarantor with Bank and all securities and property of any kind and of whatsoever nature belonging to Guarantor or in which Guarantor has any right, title or interest and which, for any purpose, have come into the possession, custody or control of Bank.

8. The word Guarantor, as used herein, shall designate one or more Guarantors. In the event that more than one Guarantor is a party to these presents, the liability of each Guarantor shall be joint and several, each Guarantor to be fully liable hereunder irrespective of the death, incapacity or other disqualification of the other Guarantor or Guarantors and Bank may proceed against one or less than all of the Guarantors, such proceeding not being deemed an election, and Bank may, at any time thereafter in the event full payment has not been realized, proceed against the other Guarantor or Guarantors. Bank may release any Guarantor hereon or any other surety of Debtor without affecting the liability hereunder of any Guarantor not released by Bank.

9. The Guarantor irrevocably and absolutely waives any and all rights of subrogation, indemnification or reimbursement or any similar rights against the Debtor with respect to this guaranty, whether such rights arise under an express or implied contract or by operation of law, it being the intention of the parties that the Guarantor shall not be deemed to be a "creditor" (as defined in Section 101 of the Federal Bankruptcy Code) of the Debtor by reason of the existence of this guaranty in the event that the Debtor becomes a debtor in any proceeding under the Federal Bankruptcy Code.

10. This guaranty shall continue to be effective or be reinstated, as the case may be, if (i) at any time any payment of any of the Liabilities is rescinded or must otherwise be returned by the Bank upon the insolvency, bankruptcy or reorganization of the Debtor or otherwise, all as though such payment had not been made, or (ii) this guaranty is released or the liability of Guarantor hereunder is reduced in consideration of a payment of money or transfer of property or grant of a security interest by the Guarantor or any other person or entity and such payment, transfer or grant is rescinded or must otherwise be returned by the Bank upon the insolvency, bankruptcy or reorganization of such person or entity or otherwise, all as though such payment, transfer or grant had not been made.

11. If any provision of this guaranty or the application thereof in any jurisdiction and/or to any person, entity or circumstance shall be invalid or unenforceable to any extent, the remainder of this guaranty and the application of such provisions in such jurisdiction and/or to other persons, entities or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law in any other jurisdiction and/or to any other persons, entities or circumstances. This Continuing Contract of Guaranty is a Illinois contract and shall be governed by and construed according to the laws of the State of Illinois.

12. The liability of Guarantor in all cases shall extend to and shall also include all costs incurred by the Bank in enforcing this guaranty, including reasonable attorney's fees and court costs.

IN WITNESS THEREOF, this instrument has been duly executed by the undersigned this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Fred L. Parsons

\_\_\_\_\_  
Eugenia M. Parsons